

WASTE SERVICE AGREEMENT

between

WASTE OPTIONS NANTUCKET, LLC

and

THE TOWN OF NANTUCKET, MASSACHUSETTS

WASTE SERVICE AGREEMENT  
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[The Table of Contents is not a part of the Waste Service Agreement  
but is for convenience of reference only.]

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## WASTE SERVICE AGREEMENT

WASTE SERVICE AGREEMENT dated December , 1996, between WASTE OPTIONS NANTUCKET, LLC, a Massachusetts limited liability company ("WON"), and the TOWN OF NANTUCKET, a municipal corporation in The Commonwealth of Massachusetts acting by and through its Board of Selectmen (the "Municipality").

Background. The Municipality has determined that an efficient and environmentally acceptable method of solid waste disposal is necessary to service its future needs, to protect the health, safety and well-being of the Municipality's residents and to prolong the utilization of the Municipality's landfill. WON has the ability and technology to operate the Municipality's landfill and materials recycling facility and to construct and operate an efficient and environmentally acceptable composting facility that will prolong the utilization of the Municipality's landfill.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

### ARTICLE I

#### Definitions

Section 1.01. Definitions. The following words used herein in capitalized form shall have the meanings ascribed to them in this section, unless a different meaning is clear from the context:

"Acceptable Sludge" means clean sludge that has been processed by the Municipality's wastewater treatment plant and that meets the minimum criteria set forth in Schedule 4 hereto and the regulations of the DEP and the U.S. Environmental Protection Agency, excluding, however, Unacceptable Sludge.

"Acceptable Waste" means solid wastes of the type presently generated within the Municipality as of the date of this Agreement, consisting primarily of ordinary household and commercial waste, that may from time to time be delivered to the Facility, excluding, however, Unacceptable Waste. Unless the context otherwise specifies or requires, the term "Acceptable Waste" shall include "Acceptable Sludge."

"Additional Capital Investments" means those investments incurred by WON as a result of a Required Change as contemplated in Section 9.05(a) hereof.

"Agreement" means this Waste Service Agreement and all amendments and supplements hereto.

"Billing Year" means the twelve calendar month period ending on the last day of June, except that the first Billing Year shall begin on the Commencement Date of Operations and the last Billing Year shall end concurrently with the expiration or termination of this Agreement.

"Change in Law" means any of the following which, individually or collectively, has a material effect on WON or its ability to perform its obligations under this Agreement or on the design, construction, testing, acceptance testing, maintenance, operation, cost or financing of the Facility:

(a) The suspension, termination, denial or failure or delay of the renewal of, or the imposition of any different or additional conditions as a precondition to the continuation or renewal of, any permit, license, consent, authorization or approval required by applicable law, rule or regulation for or in connection with the ownership, design, construction, operation or maintenance of the Facility, or the handling, transportation or disposal of waste after the Contract Date, provided that the same shall not be the result of the willful or negligent action or a lack of reasonable diligence on the part of WON in complying with rules theretofore in effect (except that neither the contesting in good faith of any such regulatory event nor the reasonable failure to so contest shall be construed as a negligent or willful action or inaction of WON); or

(b) The enactment, adoption or promulgation of, or any change or modification in, or change or modification in the interpretation or adoption of, any applicable law, rule or regulation affecting or relating to the ownership, design, construction, operation, maintenance or taxation of the Facility, or the financing thereof (except changes in financial arrangements or agreements, including interest rates, between and among WON and any or all financial institutions participating in the financing of the Composting Facility), or the receipt, handling, transportation or disposal of waste which occurs on or after the Contract Date; provided, however, that a Change in Law shall not include (i) any taxes, fees, assessments or other charges that are based on or measured by gross or net income, (ii) employment taxes including taxes under the Federal Insurance Contribution Act, or (iii) any interest, penalties or fines accruing other than due to Municipality's delay in payment or Municipality's Fault; or

(c) Any modification to the permits applicable to the Facility, provided that any such modification shall not be the result of the willful or negligent action or a lack of reasonable diligence on the part of WON.

"Commencement Date of Operations" means the date following the Start-Up Date that WON notifies the Municipality that the Composting Plant is ready for operation.

"Compost" means solid waste and sludge which has undergone decomposition of organic matter and has been stabilized and disinfected using composting, aerobic digestion, or

similar technologies, and which is beneficial to plant growth and is used or sold for use as a soil amendment, artificial top soil, growing medium or medium amendment, or other beneficial uses.

**"Compostable Waste"** means Acceptable Waste other than the following:

- (a) Demolition or construction debris from building and roadway projects;
- (b) Tires and batteries;
- (c) Dead animals or portions thereof;
- (d) Tree stumps or limbs over two inches (2") in diameter or four feet (4') in length;
- (e) Machinery or equipment including, without limitation, discarded "white goods" such as freezers, refrigerators, washing machines, etc.;
- (f) Other large bulky or unsuitable items such as cable, garden hose, drums and closed containers, etc.; and
- (g) Any items that in the reasonable judgment of WON would be likely to materially and adversely affect the operation of the Composting Plant or the production or marketability of Compost or be injurious or harmful to the Composting Plant's equipment or personnel.

**"Composting Plant"** means that portion of the Facility, excluding the Landfill and the MRF, that is to be constructed and operated by WON using composting technology licensed by Bedminster Bioconversion Corporation.

**"Composting Plant Construction Plans"** means plans and specifications for the Composting Plant prepared by WON consistent with the Conceptual Plans and approved by the Municipality, as the same may be modified by WON with the approval of the Municipality.

**"Conceptual Plans"** means the Conceptual Landfill Operation Plan attached as Schedule 5 to this Agreement and the Proposed Operational Concept for Composting Plant attached as Schedule 6 to this Agreement.

**"Confidential Information"** means proprietary information and data of WON given to the Municipality by WON in connection with this Agreement that (1) is not in the public domain, (2) is in written, graphic or tangible form and (3) is conspicuously identified as confidential by the work "confidential" marked thereon, to the extent such information is protected by the laws of the Commonwealth.

**"Contract Date"** means January 1, 1997, the effective date of this Agreement.

**"Cost Substantiation"** means, with respect to any cost to which the concept of Cost Substantiation applies, a certificate signed by either the Municipality's Representative with

respect to Direct Costs incurred by the Municipality, or a certificate signed by WON's authorized representative with respect to Direct Costs incurred by WON, stating the reason for incurring such Direct Cost, the amount of such Direct Cost, the event or Section of this Agreement giving rise to the party's right to incur such Direct Cost and that such Direct Cost is at a fair market value price for the service or materials supplied (it is understood that such service or material may be provided by an affiliate). If the other party does not give written notice of its objection to any such certificate within thirty (30) days after receipt thereof, such Direct Cost shall be deemed accepted by such party and shall be payable in accordance with the terms of this Agreement, unless otherwise agreed in writing by the parties. With respect to Direct Costs incurred by WON, exclusive of those payments to subcontractors, materialmen and others referred to in clauses (B) and (C) of the definition of "Direct Costs," the amount shall be increased to provide for the payment of a profit only when expressly authorized pursuant to the terms of this Agreement. Such increase to allow for the payment of a profit, when applicable, shall be an amount equal to ten percent (10%) of such Direct Costs, exclusive of the costs of travel and subsistence incurred by any employee of WON. Any certification provided by either party shall include copies of all invoices or charges, together with any additional documentation of such costs or expenses incurred which are necessary, in accordance with generally accepted accounting principles, to verify the amount of such costs and expenses and to demonstrate the basis for the amount claimed.

**"Delivery Hours"** means the hours between 7:00 a.m. and 3:30 p.m., Monday through Sunday, during which deliveries of Acceptable Waste will be normally accepted at the Composting Facility, excluding, however, New Year's Day, Thanksgiving, Christmas, Memorial Day, Labor Day and July 4 (**"Normal Delivery Hours"**).

If the Municipality wishes to arrange for delivery of Acceptable Waste or Acceptable Sludge at other than Normal Delivery Hours the Municipality will notify WON of such request and WON will cooperate with the Municipality to extend such hours to accommodate such request to the full extent feasible (such extended Delivery Hours being referred to herein as **"Extraordinary Delivery Hours"**). Normal Delivery Hours and Extraordinary Delivery Hours shall be collectively referred to herein as **"Delivery Hours."**

**"DEP"** means the Department of Environmental Protection of The Commonwealth of Massachusetts, or the successor to such Department.

**"Direct Costs"** means, in connection with any cost or expense incurred by either party for which Cost Substantiation is required pursuant to the terms of this Agreement, the sum of (A) the costs of the party's standard payroll directly and reasonably related to the performance of any obligation of a party pursuant to the terms of this Agreement, consisting of compensation and fringe benefits, including vacation, sick leave, holidays, retirement, worker's compensation insurance otherwise provided by either party pursuant to the provisions hereof, federal and state unemployment taxes and all medical and health insurance benefits, all as customarily provided by such party to its employees, plus (B) payments of reasonable costs to subcontractors (other than an affiliate) necessary to and in connection with the performance of such obligation, plus (C) the reasonable costs of material, services, direct rental costs and supplies purchased (equipment manufactured or supplied by WON or its affiliates shall be considered purchased materials at its

actual invoice cost, provided such cost is an arm's length fair market value cost), plus (D) the reasonable costs of travel and subsistence incurred by any employee of such party, a reasonable allocation of overhead and administrative costs with respect thereto.

"Facility" means the Landfill and the Composting Plant and ancillary facilities, together with roadways, equipment and other improvements to be constructed by WON on the Site as contemplated by this Agreement, all equipment and vehicles used in connection therewith, and all modifications thereof, replacements and additions thereto.

"Hazardous Waste" means any material or substance, or combination of materials or substances, which as of the Contract Date by reason of quantity, concentration, composition or characteristic is:

(a) a hazardous substance as defined by Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C.A. § 9601 (Supp. 1987), including but not limited to all materials listed or identified as hazardous waste under Subtitle C of the Resource Conservation & Recovery Act of 1976, as amended, 42 U.S.C.A. § 6921 (1983 and Supp. 1987) and implementing regulations adopted by the United States Environmental Protection Agency found at 40 C.F.R., Part 261; all materials listed or identified as harmful, toxic, dangerous or hazardous waste pursuant to the Solid Waste Disposal Act, 41 U.S.C.A. § 6901 et seq.; all materials the disposal of which is regulated by the Toxic Substances Control Act, 15 U.S.C.A. § 2601, et seq.; and hazardous material as defined in the Hazardous Material Transportation Act, 49 U.S.C.A. § 1801, et seq.; in each case as the same may be amended, replaced, or superseded;

(b) a chemical listed by the United States Environmental Protection Agency in accordance with Section 302(a) or Section 313(c) of the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C.A. §§ 11002(a), 11023(c) (1987 Supp.);

(c) a special nuclear or byproduct material within the meaning of the Atomic Energy Act of 1954, 42 U.S.C.A. § 2014 (1975 and 1987 Supp.);

(d) a material or substance which may endanger health or safety including, but not limited to, any material or substance or combination of materials or substances which are explosive, volatile, radioactive, toxic, corrosive, flammable, reactive, an irritant, or a strong sensitizer, or which generate pressure through decomposition, heat, or other means if such materials or substances may cause injury, illness or harm to humans, to domestic animals or livestock, or to wildlife; or

(e) a material or substance that is treated as a hazardous waste, substance or material by any federal, state, or local law, regulation, or ordinance.

With regard to materials or substances which are not Hazardous Waste as of the Contract Date, if any law shall subsequently declare, or if any governmental agency or unit having appropriate jurisdiction shall thereafter determine, pursuant to a Change in Law, that such

materials or substances are Hazardous Waste, then such materials or substances shall be considered to be Hazardous Waste for the purposes of this Agreement as of the effective date of such governmental determination.

The parties recognize that small quantities and low concentrations of certain of the materials described above that are normally found in household waste are not presently treated by the foregoing rules as Hazardous Waste and, absent a Change in Law to the contrary, will not be treated as Hazardous Waste for purposes of this Agreement.

**"Hazardous Waste Costs"** means the costs, liabilities, fines and expenses associated with or arising from the delivery, clean-up, removal, transportation, disposal or processing of Hazardous Waste; provided, however, that Hazardous Waste Costs shall not include any costs or liabilities paid by any third party or under an insurance policy. Hazardous Waste Costs shall also include the cost of any repairs or alterations to the Facility or the Site necessitated by the presence or inadvertent processing of such Hazardous Waste at the Facility and all liabilities, damages, claims, demands, expenses, suits or actions including reasonable appeals, fines, penalties and attorneys' fees in connection with any civil or administrative proceeding arising from the presence of such Hazardous Waste at the Site or the processing, removal or disposal of such Hazardous Waste (including, without limitation, any suit for personal injury to, or death of, any person or persons, or loss or damage to property resulting from the presence, removal, disposal or processing of such Hazardous Waste).

**"Indebtedness"** means the indebtedness incurred by WON to finance the construction of the Composting Plant or working capital with respect to the Facility or Additional Capital Investments, and any indebtedness issued to refinance, extend or modify such Indebtedness.

**"Landfill"** means the Landfill at the Site owned and currently operated by the Municipality.

**"Landfill Plan of Operation"** means a plan for the operation of the Landfill after the Commencement Date of Operations during the Term, including the temporary capping of those areas of the Landfill not in current use, the mining of waste from the Landfill, the lining of mined areas, the deposit of Residue from the Composting Plant, the deposit of Recyclables from the MRF and the closure of the Landfill, which plan shall be prepared by WON consistent with the Conceptual Plans and approved by the Municipality, as the same may be modified by WON with the approval of the Municipality.

**"Monthly Billing Period"** means the monthly period described in Section 9.04 hereof.

**"MRF"** means the materials recycling facility at the Site owned and currently operated by the Municipality.

**"MRF Management Fee"** means the sum of \$260,000 per year, as the same may be escalated in accordance with Section 9.08 hereof.

**"Municipality Fault"** means any nonperformance by the Municipality of any of its obligations under this Agreement that is not excused pursuant to the express terms of this Agreement.

**"Municipality's Guaranteed Annual Tonnage"** means Twenty-Three Thousand (23,000) Tons of Acceptable Waste (excluding Acceptable Sludge and excluding Recyclables accepted at the MRF); provided that tonnages for the first and last Billing Year of this Agreement, if less than a full year, shall be pro rated on the basis of the total number of days in such year during which this Agreement is in effect over a period of three hundred sixty-five (365) days.

**"Municipality Representative"** means the individual or alternative individuals designated by written notice from time to time as such by the Municipality's duly authorized officer to WON not less than three (3) business days prior to the effective date thereof who, by such written notice, is or are authorized to sign as the Municipality Representative pursuant to the terms hereof.

**"Net Compost Credit"** means, for each Monthly Billing Period, an amount equal to fifty percent (50%) of the difference between (i) the aggregate proceeds received by WON from the sale of Compost during the Monthly Billing Period, and (ii) all costs incurred by WON in the sale or disposition of Compost during the Monthly Billing Period including, without limitation, costs of marketing, handling, transportation and disposal of Compost, all determined in accordance with general accounting standards with Cost Substantiation as may be necessary to verify such costs.

**"Net Recyclables Credit"** means the balance, if any, of the proceeds of sales or other dispositions of Recyclables, after paying, or reimbursing the Municipality for the payment of, the Direct Costs of relating to disposition of the Recyclables as provided in Section 4.01(k) hereof.

**"Plant Site"** means that portion of the Site, separately designated in Schedule 2, that shall be leased to WON under Section 3.03 and on which the Composting Plant shall be constructed.

**"Project Agreements"** means all agreements entered into by WON in connection with the construction, permitting, ownership, use, operation, maintenance or repair of the Facility or the financing thereof including, without limitation, the Indebtedness issued or incurred to finance the acquisition, construction or installation of the Composting Plant and related documents executed in connection with the delivery of such Indebtedness, and this Agreement.

**"Recyclable"** means aluminum, metals, paper and such plastics and other materials, excluding Compost, that have the potential to be recycled, and not contaminated by significant amounts of Hazardous Wastes, that WON receives at the MRF or removes at the Composting Plan or retains from waste or Residue (whether separated before or after processing).

"Residue" means the residual material remaining after the composting of waste by the Composting Plant (whether separated before or after processing), excluding Recyclables.

"Required Change" means any change required or permitted as contemplated in Section 9.05(a) hereof.

"Site" means that parcel of real property located in and owned by the Municipality on which the Landfill and the MRF are located and on which the Composting Plant is to be constructed, as more particularly described in Schedule 2.

"Sludge Handling Fee" means the sum of \$150,000 per year, as the same may be escalated in accordance with Section 9.08 hereof.

"Start-Up Date" means the day which WON specifies in its written notice to the Municipality as the first day on which the Composting Plant is scheduled for receiving Acceptable Waste for the purpose of testing the operation of the Composting Plant.

"Term" means the duration of the term of this Agreement as set forth in Section 14.12.

"Tipping Fee" means the fees at the Unit Billing Rate payable to WON by the Municipality as provided in Article IX.

"Ton" means a short ton consisting of 2,000 pounds, wet basis, except that in the case of Acceptable Sludge, Tons shall be on a dry basis (weight of solid content only).

"Town Approval" means approval of this Agreement by the Municipality's Board of Selectmen and town meeting in conformity with applicable law.

"Unacceptable Sludge" means any of the following: (1) sludge generated by any wastewater treatment plant prior to the Contract Date which has been stockpiled; (2) sludge deriving from an industrial wastewater treatment plant (unless approved in writing by WON); (3) unprocessed septage from any septic tank, cesspool or other septage treatment facility unless approved by WON in its discretion; and (4) sludge which does not otherwise constitute Acceptable Sludge.

"Unacceptable Waste" means any of the following: (1) Hazardous Waste and (2) any of the following items; provided, however, that except with respect to the items listed below, such items that are normally found in household waste in small quantities and concentrations as of the Contract Date shall not be treated as Unacceptable Waste under this clause (2):

- (a) Industrial solid and liquid wastes and sludges;

- (b) Marine vessels (except wooden vessels that can be crushed and treated as construction debris), motor vehicles or any major parts or components thereof;
- (c) Pathological wastes;
- (d) Waste oil or other oily substances;
- (e) Machinery or equipment other than household appliances and equipment, including household "white goods" such as freezers, refrigerators, washing machines, etc.;
- (f) Firearms and shells or other explosives from or used in connection with firearms;  
and
- (g) Fly and bottom ash.

Unless the context otherwise specifies or requires, the term "Unacceptable Waste" shall include "Unacceptable Sludge."

**"Uncontrollable Circumstance"** means any act, event or condition, whether affecting the Municipality or WON, or any of their respective suppliers, agents, employees or materialmen, that has, or may reasonably be expected to have, a material adverse effect on WON or the Municipality, or on any of the Project Agreements or on the Facility or the Site or the acquisition, design, construction, equipping, start-up, testing, operation, ownership or possession of either or both of them, or on the receipt, handling, transportation, removal or disposal of Residue or Unacceptable Waste, if such event or condition is beyond the reasonable control, and not attributable to the willful or negligent action or a lack of reasonable diligence, of the party relying thereon as justification for not performing any obligation or complying with any condition required of such party hereunder. Such acts, events or conditions may include, but shall not be limited to, the following:

- (a) an act of God, such as a hurricane, lightning, fire, explosion, nuclear radiation, plague, tornadoes, earthquake, flood, landslide, or other cataclysmic phenomenon of nature;
- (b) an act of public enemy, war, blockade, sabotage, insurrection, riot, general unrest or restraint by government or people, civil disorder or disturbance, fires and explosions;
- (c) governmental preemption of labor, materials or facilities in connection with a national or state emergency;
- (d) the failure of public utilities to furnish labor, services, utilities, materials, or equipment on the dates agreed to which are necessary for the construction, start up, performance testing or operation of the Composting Plant or the operation of the Landfill or the MRF;
- (e) any Change in Law;

(f) with respect to WON only, the delivery to the Facility by the Municipality of Hazardous Waste or Unacceptable Waste or Unacceptable Sludge;

(g) the condemnation, taking, seizure, involuntary conversion or requisition of title to or use of the Facility, the Site or any material portion or part thereof by the action of any federal or state court or any federal, state, county, city or other local government agency or political subdivision, or any restriction of use thereof by any such court or governmental entity; and

(h) strikes, lockouts and other labor disputes.

"Unit Billing Rate" means \$90.00 per Ton of Acceptable Waste (excluding Acceptable Sludge) as such rate may be escalated in accordance with Section 9.08 hereof.

"WON" means Waste Options Nantucket, LLC, a Massachusetts limited liability company, and its successors and assigns.

"WON Fault" means any nonperformance by WON of its obligations under this Agreement that is not excused pursuant to the express terms of this Agreement.

"WON's Guaranteed Annual Tonnage" means Twenty-Five Thousand (25,000) Tons of Acceptable Waste (excluding Acceptable Sludge and excluding Recyclables accepted at the MRF); provided that tonnages for the first and last Billing Year of this Agreement, if less than a full year, shall be pro rated on the basis of the total number of days in such year during which this Agreement is in effect over a period of three hundred sixty-five (365) days.

"Wrongfully Rejected Waste" means all Acceptable Waste delivered to the Facility that is not either (i) accepted by WON or (ii) properly rejected by WON pursuant to Section 4.06 hereof.

Section 1.02. Section References. Unless the context otherwise indicates, section references shall be to sections in this Agreement.

## ARTICLE II

### Representations and Warranties

Section 2.01. Representations by WON. WON warrants and represents to Municipality the following:

(f) with respect to WON only, the delivery to the Facility by the Municipality of Hazardous Waste or Unacceptable Waste or Unacceptable Sludge;

(g) the condemnation, taking, seizure, involuntary conversion or requisition of title to or use of the Facility, the Site or any material portion or part thereof by the action of any federal or state court or any federal, state, county, city or other local government agency or political subdivision, or any restriction of use thereof by any such court or governmental entity; and

(h) strikes, lockouts and other labor disputes.

"Unit Billing Rate" means \$90.00 per Ton of Acceptable Waste (excluding Acceptable Sludge) as such rate may be escalated in accordance with Section 9.08 hereof.

"WON" means Waste Options Nantucket, LLC, a Massachusetts limited liability company, and its successors and assigns.

"WON Fault" means any nonperformance by WON of its obligations under this Agreement that is not excused pursuant to the express terms of this Agreement.

"WON's Guaranteed Annual Tonnage" means Twenty-Five Thousand (25,000) Tons of Acceptable Waste (excluding Acceptable Sludge and excluding Recyclables accepted at the MRF); provided that tonnages for the first and last Billing Year of this Agreement, if less than a full year, shall be pro rated on the basis of the total number of days in such year during which this Agreement is in effect over a period of three hundred sixty-five (365) days.

"Wrongfully Rejected Waste" means all Acceptable Waste delivered to the Facility that is not either (i) accepted by WON or (ii) properly rejected by WON pursuant to Section 4.06 hereof.

Section 1.02. Section References. Unless the context otherwise indicates, section references shall be to sections in this Agreement.

## ARTICLE II

### Representations and Warranties

Section 2.01. Representations by WON. WON warrants and represents to Municipality the following:

(f) with respect to WON only, the delivery to the Facility by the Municipality of Hazardous Waste or Unacceptable Waste or Unacceptable Sludge;

(g) the condemnation, taking, seizure, involuntary conversion or requisition of title to or use of the Facility, the Site or any material portion or part thereof by the action of any federal or state court or any federal, state, county, city or other local government agency or political subdivision, or any restriction of use thereof by any such court or governmental entity; and

(h) strikes, lockouts and other labor disputes.

"Unit Billing Rate" means \$90.00 per Ton of Acceptable Waste (excluding Acceptable Sludge) as such rate may be escalated in accordance with Section 9.08 hereof.

"WON" means Waste Options Nantucket, LLC, a Massachusetts limited liability company, and its successors and assigns.

"WON Fault" means any nonperformance by WON of its obligations under this Agreement that is not excused pursuant to the express terms of this Agreement.

"WON's Guaranteed Annual Tonnage" means Twenty-Five Thousand (25,000) Tons of Acceptable Waste (excluding Acceptable Sludge and excluding Recyclables accepted at the MRF); provided that tonnages for the first and last Billing Year of this Agreement, if less than a full year, shall be pro rated on the basis of the total number of days in such year during which this Agreement is in effect over a period of three hundred sixty-five (365) days.

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Section 1.02. Section References. Unless the context otherwise indicates, section references shall be to sections in this Agreement.

## ARTICLE II

### Representations and Warranties

Section 2.01. Representations by WON. WON warrants and represents to Municipality the following:

(a) WON is a limited liability company duly organized, validly existing and in good standing under the laws of the Commonwealth of Massachusetts and has full power and authority to execute and to enter into this Agreement and to perform this Agreement.

(b) The execution and delivery of this Agreement by WON has been duly authorized by all appropriate action, and this Agreement constitutes the legal, valid and binding obligation of WON enforceable in accordance with its terms.

(c) The execution, delivery and performance of this Agreement by WON will not violate any provision of law, any order of any court or other agency of government, its certificate of organization or operating agreement, or any indenture, material agreement or other instrument to which WON is now a party or by which it or any of its properties or assets is bound, or be in conflict with, result in a breach of or constitute a default (with due notice or the passage of time or both) under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets of WON.

(d) To the best of its knowledge, there is no pending or threatened litigation or governmental proceeding pertaining to WON that would adversely affect the contemplated construction of the Composting Plant or the contemplated operation of the Facility or the ability of WON to perform its obligations under this Agreement.

(e) WON and its engineers and contractors have the requisite expertise and technology in the field of solid waste management and co-composting plant operation, and WON will exercise and apply such expertise in the design, construction and operation of the Composting Plant and in the operation of the Landfill and the MRF.

(f) WON is not presently debarred from entering into a public contract in the Commonwealth of Massachusetts under the provisions of Section 29F of Chapter 29 or any other applicable debarment provisions of any other chapter of the General Laws of Massachusetts or any rule or regulation thereunder.

(g) WON has not engaged and will not during the Term engage in any activity that would constitute a violation of Chapter 268A of the General Laws of Massachusetts relating to conflicts of interest.

(h) WON has filed all state tax returns and paid all state taxes and has provided its Federal Identification Number as required by Section 49A of Chapter 62C of the General Laws of Massachusetts.

Section 2.02. Representations by Municipality. The Municipality represents and warrants as follows:

(a) The Municipality is a corporate body politic of the Commonwealth of Massachusetts and is empowered and authorized under the laws of the Commonwealth of Massachusetts to enter into this Agreement and to perform its obligations hereunder.

(b) Except for Town Approval, the execution and delivery of this Agreement has been duly authorized by all appropriate actions of the Municipality's governing body, and this Agreement constitutes the legal, valid and binding obligation of the Municipality, enforceable in accordance with its terms.

(c) To the best of its knowledge, there is no pending or threatened litigation or governmental proceedings pertaining to the Municipality that would adversely affect the contemplated construction of the Composting Plant or the contemplated operation of the Facility or the ability of the Municipality to perform its obligations under this Agreement.

(d) The execution, delivery and performance of this Agreement by the Municipality will not violate any provision of law, any order of any court or other agency of government, or any indenture, material agreement or other instrument to which the Municipality is now a party or by which it or any of its properties, revenues or assets is bound, or be in conflict with, result in a breach of or constitute a default (with due notice or the passage of time or both) under any such indenture, agreement or other instrument or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the properties, revenues or assets of the Municipality.

(e) The Site has been lawfully assigned and approved for use as a landfill and MRF in accordance with applicable laws and regulations of the Commonwealth of Massachusetts and applicable zoning and other regulations and ordinances of the Municipality.

### ARTICLE III

#### Design and Construction

Section 3.01. Design and Permitting. Promptly following the execution of this Agreement, WON shall proceed with the preparation of plans and permit applications for the operation of the Landfill, the MRF and the construction and operation of the Composting Plant, all in accordance with the time schedule specified in Schedule 7 hereto. The Municipality shall cooperate with WON in the preparation of such plans and applications, shall not unreasonably withhold or delay its approval of such plans, shall provide information reasonably available regarding prior operations of the Landfill, the MRF and the Site, and shall cooperate with WON in the submission of such plans and applications, or any portion thereof, to the DEP and in modifying such plans if required by regulatory authorities. WON's obligation to proceed with the design and permitting under this Section shall not be contingent upon Town Approval, except that WON shall have no obligation to continue such design and permitting if this Agreement is terminated under Article X or XII hereof.

Section 3.02. The Composting Plant. Subject to the conditions precedent to its obligations hereunder, as set forth below, WON agrees to construct the Composting Plant on the Site in accordance with the Composting Plant Construction Plans, to pay the cost of construction thereof, and to operate and maintain the Composting Plant in accordance with the terms of this Agreement. The Composting Plant shall have the capacity to process 80 Tons of Acceptable Waste per day and shall otherwise be capable of satisfying the requirements of this Agreement, subject to the right to reject waste as described in Section 4.06 hereof.

Section 3.03. Lease of Plant Site. The Municipality hereby leases the Plant Site to WON, with all buildings and structures thereon, for the Term of this Agreement for use solely for the Facility in accordance with the terms of this Agreement. The Municipality agrees that such use is a "public purpose" within the meaning of Chapter 59, Section 2B of the General Laws of Massachusetts and that WON shall not be assessed or taxed for the real or personal property comprising the Facility or any part thereof. At WON's request, the Municipality and WON shall enter into a separate recordable lease of the Plant Site on terms consistent with this Agreement, including assignability under Section 14.08 hereof and the rights of assignees under Section 12.01(c) hereof.

Section 3.04. Construction. WON, directly or through a general contractor selected by it, shall design, construct and equip the Composting Plant on the Plant Site in accordance with the Composting Plant Construction Plans in good and workmanlike manner pursuant to good construction and engineering practices and in accordance with this Agreement and applicable law. Existing structures on the Plant Site may be removed or modified and incorporated into the Composting Plant, as shall be specified in the Composting Plant Construction Plans.

Section 3.05. Labor and Materials. WON shall furnish, through its general contractor and subcontractors, all work, labor, materials, testing, supervision and equipment required for the performance of its obligations relating to the design, construction and equipping of the Composting Plant.

Section 3.06. Equipment. On the Commencement Date, the Municipality shall transfer and assign to WON, free and clear of debt, liens and leases, the equipment listed in Schedule 1 hereto.

Section 3.07. Roads and Utilities. WON shall be responsible for the construction and maintenance of all roads within the Plant Site necessary to connect the Composting Plant to existing roads. WON shall also be responsible for causing all utility lines within the Plant Site to be constructed and maintained in order to meet the utility requirements for the performance by WON of its obligations under this Agreement, provided, however, that during the Term, all electricity and water for the Facility shall be furnished to the Facility at the expense of the Municipality. All such electric and water charges shall be billed by the utility to the Municipality and shall be paid directly by the Municipality to the utility.

Section 3.08. Preparation of Site. (a) WON shall be responsible for grading the Plant Site and performing any other site work necessary for the construction of the Composting Plant and the performance of its obligations under this Agreement.

(b) The Municipality shall be fully responsible for any underground storage tanks or Hazardous Wastes on the Site as of the Contract Date.

Section 3.09. Construction Notices. At the time of commencement of construction, WON shall prepare and submit to the Municipality a tentative schedule showing the construction timetable and shall periodically update that schedule until completion of the Composting Plant.

Section 3.10. Particular Covenants with Respect to the Composting Plant. WON makes the following particular covenants in respect of the Composting Plant:

(a) Stormwater Control. In order to minimize leachate generation, WON will construct and operate the Composting Plant so that surface water drainage is diverted around and away from the operating area of the Composting Plant, including the receiving, processing, curing and storage areas. In addition, WON will consider site development plans that control erosion, flooding, sedimentation and siltation. The stormwater system will be designed to accommodate a 25-year storm event, and will be hydraulically separate from the leachate collection and treatment system. Further, the system will be designed to function during frozen ground conditions.

(b) Leachate Control. Stormwater or other water (including wash water) which comes in contact with solid waste being received, stored, processed or composted, or which mixes with leachate, will be considered leachate and will be reused in the process or treated to meet discharge standards. Leachate which is reused in the composting process will only be used to increase the moisture content of the initial feedstock. Leachate will not, under any conditions, be added to composting material after it has met the time and temperature requirements of the acceptable process to further reduce pathogens. Further, the system will be designed to function during frozen ground conditions.

(c) Odor Control. Process air from the solid waste and sludge receiving, storing, and processing areas as well as from the composting and curing areas will be collected, treated (deodorized or filtered) and dispersed to the atmosphere as necessary through soil biofilters and shall not exceed 3.0 ppm hydrogen sulfide at any boundary of the Site.

(d) Traffic Impacts. WON will construct an incoming road to the Composting Plant from the property line and shall construct and maintain all other necessary Site roads, maneuvering areas, parking areas, and other required paving. All road and paving construction will be designed and constructed in accordance with applicable municipal and state standards. WON will design the Composting Plant to minimize traffic congestion at the Site and on surrounding roadways during construction and operation. Delivery vehicle turnaround time is generally expected to be a maximum of 15 minutes from weigh-in to exit, including unloading time. A queuing analysis utilizing reasonable assumptions based on empirical operating data will

be performed by WON to support its ability to meet turnaround time criteria. WON shall supply all assumptions and data used in the analysis.

## ARTICLE IV

### General Operation of the Facility

Section 4.01. Operating Covenants. WON shall, on and after Commencement Date of Operation, except as otherwise expressly provided for herein, operate and maintain the Facility in accordance with the provisions of this Article IV, all permits applicable to the Facility and applicable law and regulation, so as:

(a) To be capable of receiving and processing Acceptable Waste generated by the Municipality during the Term.

(b) To process in the Composting Plant all Compostable Waste received at the Facility, including all Acceptable Sludge processed by the Municipality's wastewater treatment facility; provided that the Composting Plant shall not be required to process Compostable Waste in excess of 80 Tons per day and provided, further, that all Acceptable Sludge shall be transported by the Municipality to the Composting Plant at the expense of the Municipality.

(c) To remove ("mine") from the Landfill annually and to process in the Composting Plant at least that number of Tons of Compostable Waste that is equal to the number of Tons of waste deposited annually into the new lined portion of the Landfill, exclusive of Residue from the composting of mined waste, provided that the Landfill will have a permitted operating capacity of not less than 50 tons of solid waste per day and that any change in the applicable permits, law or regulations that shall materially diminish or impose additional restrictions on the amount or type of waste that may be disposed of in the Landfill shall be deemed a Change in Law.

(d) To dispose of in the Landfill all Residue and non-compostable components of all Acceptable Waste.

(e) To recover and process in the MRF all Recyclables recovered from Acceptable Waste at the Facility.

(f) To dispose of all Compost produced at the Composting Plant in such manner as to be reasonably assured that it will be used for agricultural, horticultural, silvacultural or other beneficial purposes.

(g) To operate in accordance with the Landfill Plan of Operation.

(h) To keep the Facility open for the delivery of Acceptable Waste and Recyclables during the Normal Delivery Hours.

(i) To keep any structures, surface roads, walkways and parking areas within the Site in good condition at all times.

(j) To receive, sort and bale at the MRF all Recyclables delivered to the MRF during Normal Delivery Hours.

(k) To deposit baled Recyclables in the Landfill, provided that (1) WON shall arrange for the sale or other disposition of Recyclables from the MRF or the Landfill as WON shall determine, subject to the approval of the Municipality, which approval shall not be unreasonably withheld or delayed, (2) the costs of transporting Recyclables from the Facility and disposing of Recyclables other than in the Landfill (excluding the costs of removing Recyclables from the Landfill and loading Recyclables for transport from the Facility) shall be Direct Costs payable by the Municipality (subject to Cost Substantiation), and (3) all proceeds of such dispositions of Recyclables shall be applied first to pay, or to reimburse the Municipality for the payment of, such Direct Costs (determined on a cumulative basis for each Billing Year), and any balance of such proceeds for a Billing Year (the "Net Recyclables Credit") shall be shared equally by the Municipality and WON.

(l) To store or sell or otherwise dispose of Compost at such times and at such costs and on such terms as WON shall determine, in its discretion, provided that the costs of marketing and packaging Composting, transporting Compost from the Facility and disposing of Compost other than in the Landfill shall be chargeable against the Net Compost Credit.

(m) To report annually to the Municipality, in such form and detail as may be required by applicable law and regulation, the types and quantities of Recyclables and Compost processed at the Facility.

(n) To employ and supervise all personnel required for operation of the Facility.

(o) To maintain the MRF building and the Compost Plant building, provided that capital repairs and replacements to the MRF building shall be Direct Costs payable by the Municipality (subject to Cost Substantiation) except to the extent that such repairs shall be necessitated by the negligence of WON.

(p) To maintain the equipment at the Facility, provided that the Municipality shall assign to WON, or cooperate with WON to secure for WON the benefit of, all of the rights which the Municipality may have against third parties for breach of warranty or other representations respecting the equipment during the Term.

Section 4.02. Compliance With Laws. WON shall operate and maintain the Facility in full compliance with all applicable laws, regulations and rules. WON may, however, contest the necessity of any permit or any condition therein or the validity or applicability of any

other legal requirement without being in default hereunder if it does so in good faith, with due diligence and by appropriate proceedings, provided that during the pendency of such proceedings, WON shall continue to operate the Facility in accordance with the terms of this Agreement.

Section 4.03. Supervision. WON shall have responsibility for and shall exercise sufficient supervision over Facility operations to reduce health and safety risks to all persons employed otherwise on the Site including visitors, by instituting and causing to be maintained reasonably prudent operating standards and procedures.

Section 4.04. Municipality Access. The Municipality officials and employees designated in writing from time to time by the Municipality Representative prior to their visit may visit or inspect the Facility and the Site at any reasonable time during normal business hours during the Term; however, no such visitors shall be given access to the internal workings of the digester or to areas believed by WON to contain Confidential Information. Any such visits shall be conducted in a manner that does not interfere with WON's construction or operations. WON may require any person on the Site to comply with its reasonable rules and regulations and to sign a statement agreeing to assume the risk of the visit except for the risk of injury due to the intentional acts of WON or any of its subcontractors, agents or employees.

Section 4.05. Traffic Flow Regulation. (a) WON may reasonably regulate the flow of traffic from the Facility scale into the Facility receiving area, may deny admission to the Site to any vehicle carrying Hazardous Waste or Unacceptable Waste, any vehicle that may unreasonably leak, spill or allow waste to be blown or scattered, and any vehicle that is not in a safe condition for purposes of its operation at the Composting Plant, and may otherwise promulgate reasonable safety and traffic rules applicable to the Site.

(b) Subject to subsection (a) above and Section 4.06, WON shall be obligated to accept Recyclables and Acceptable Waste properly delivered to the Facility, subject to the Municipality's right to restrict or regulate use of the Facility for failure to pay fees or assessments imposed by the Municipality.

Section 4.06. Rejection of Delivery. WON may reject tenders by or for the account of the Municipality of:

(i) Acceptable Waste or Acceptable Sludge delivered at hours other than Normal Delivery Hours or in vehicles or containers other than those specified herein;

(ii) Hazardous Waste; and

(iii) Unacceptable Waste and Unacceptable Sludge.

Section 4.07. Title to Compost and Residues. Title to all Compost resulting from the processing of waste and sludge by the Facility shall vest in WON upon removal of the Compost from the processing equipment. Title to all Recyclables delivered to the Facility, all

Residue and materials other than Compost resulting from processing and all Unacceptable Waste, Hazardous Waste and all other waste and sludge delivered to the Composting Plant shall at all times remain vested in the Municipality.

Section 4.08. Fees. Notwithstanding any other provision of this Agreement:

(i) Tipping Fees shall be charged as to any waste delivered to the Facility as provided in Article 9 only upon the initial delivery of that waste to the Composting Plant. No Tipping Fees shall be charged for the composting of waste mined from the Landfill.

(ii) No Tipping Fees shall be charged as to pre-sorted Recyclables delivered to the MRF, provided that Recyclables delivered to the Composting Plant shall be deemed a part of the Acceptable Waste and shall be included in the calculation of Tipping Fees.

(iii) No Tipping Fees shall be charged as to Acceptable Sludge delivered to the Facility at the cost of the Municipality.

## ARTICLE V

### General Covenants of WON

Section 5.01. Insurance. WON will obtain, provide written proof of, and maintain during the Term those policies of insurance listed on Schedule 3 hereto, except that in the event certain required insurance is no longer available or not available at commercially reasonable costs, then WON's requirement to obtain such insurance may be waived or reduced to the amount available at commercially reasonable costs with the written agreement of the Municipality. WON shall obtain and show written proof of such insurance certificates from all insuring companies.

Section 5.02. Qualification to do Business. WON agrees that during the term of this Agreement it will remain in good standing under the laws of the Commonwealth of Massachusetts and obtain and maintain all approvals, permits and licenses necessary to perform its obligations under this Agreement, subject to its rights to contest such requirements as described in Section 4.02 above.

Section 5.03. Equal Employment. WON shall conform to all applicable Equal Employment Opportunity statutes of the Commonwealth of Massachusetts and the federal government. WON shall not discriminate on the basis of race, creed, color, national origin, sex, religion or disability.

## ARTICLE VI

### Weights

Section 6.01. Scale Construction and Operation. (a) WON shall maintain one 60-ton minimum capacity electronic load-cell type weight scale to weigh all inbound vehicles delivering waste to the Facility, excluding the MRF, and all outbound vehicles containing Compost, Recyclables and Unacceptable Waste removed from the Facility. WON shall assume the operation and control of the scale in accordance with the procedures specified herein and shall employ qualified staff to operate it.

(b) WON, at its own cost and expense to ensure reasonable accuracy, shall provide for the scale to be certified by public officials at least twice annually, and at such other times as the Municipality, at its expense, deems necessary. WON shall pay the cost of all necessary calibrations of the scale.

Section 6.02. Weight Tickets and Procedures. (a) Each incoming waste vehicle and outbound vehicle shall be weighed, indicating gross weight, tare weight, vehicle body or container cubic yard size, time and truck identification on a weight record. The Municipality, WON and the operator of each weighed vehicle shall receive a copy of the weight ticket. Each weight ticket shall include at least the date and time, hauler code, vehicle I.D. number and tons delivered or removed. Such records shall be maintained by WON for a period of at least two years and shall be used by WON as a basis for calculations required herein.

(b) Copies of all current weight records shall be delivered to the Municipality on a weekly basis. The Municipality shall have the right to inspect the books and records of the gatehouse at any time, with reasonable prior notice. Such inspections shall be conducted during business hours in such a manner as to not unreasonably interfere with gatehouse operations. The Municipality may at its expense retain an inspector to monitor WON's compliance with the provisions of this Article VI.

(c) Tonnage generally shall be measured by subtracting tare weights from the corresponding incoming weights of each vehicle to ascertain net vehicle load. WON shall establish reasonable procedures to insure proper vehicle identification and to predetermine vehicle tare weights and container volume in the event outbound vehicle weights cannot be determined. In the event that the truck scale should be inoperative for a short period of time, the weights of the loads of solid waste shall be determined on the basis of 500 lbs. per cubic yard of incoming waste. WON shall notify the Municipality within twenty-four (24) hours or as soon thereafter as possible if all weighing facilities will be inoperative for more than one day.

## ARTICLE VII

### General Covenants Of The Municipality

Section 7.01. Payment. The Municipality agrees that, on and after the Commencement Date of Operations, during each Billing Year the Municipality will pay Tipping Fees in accordance with the provisions of Article IX. All Acceptable Waste (excluding Acceptable Sludge) received at the Facility shall be counted toward the Municipality's Guaranteed Annual Tonnage, except for Recyclables delivered to the MRF.

Section 7.02. Exclusivity. During the Term, WON shall have the exclusive right to occupy the Plant Site as lessee thereof, to operate the Landfill and the MRF and to utilize the Site for the processing and disposal of waste.

Section 7.03. Rate Covenant. Upon the satisfaction of the conditions precedent set forth in Article X hereof, and thereafter throughout the Term, the Municipality shall fix, establish, revise from time to time as necessary, maintain and collect thereunder, fees, rates and charges for solid waste disposal services that will always provide revenues sufficient to pay, in the aggregate, the fees, costs and expenses payable by the Municipality hereunder. The Municipality shall be unconditionally and irrevocably obligated during the Term to take all lawful action necessary or required to continue to entitle the Municipality to receive revenues in an amount sufficient to satisfy its payment obligations hereunder.

Section 7.04. Electricity and Water. During the Term the Municipality shall cause electricity and water to be furnished to the Site in ample quantities for the operation of the Landfill, the Composting Plant and the MRF. The Municipality shall cause such electricity and water to be separately metered and shall timely pay all utility charges for such electricity.

Section 7.05. Sludge (a) During the Term, the Municipality shall continue to operate or cause to be operated the Municipality's existing wastewater treatment plant or a successor facility of at least equivalent capacity. From and after the Commencement Date of Operations, the Municipality shall deliver to the Composting Plant on a regular mutually agreed schedule, and WON shall accept, the entire output of Acceptable Sludge from such wastewater treatment facility.

(b) After the Start-Up Date and until the Commencement Date of Operations, the Municipality shall deliver or cause to be delivered to the Composting Plant such quantities of Acceptable Sludge as WON may reasonably request upon seven (7) days' advance written notice in order to operate the Composting Plant at full capacity during the start-up and testing period. WON shall provide the Municipality with at least thirty (30) days prior written notice of the anticipated date on which it will require delivery of Acceptable Sludge for purposes of testing the Composting Plant prior to commencing operations, which notice shall include estimated delivery schedules and quantities of Acceptable Sludge. WON may change such schedules from time to time upon two (2) business days' notice.

## ARTICLE VIII

### Unacceptable and Hazardous Waste

Section 8.01. Disposal of Unacceptable Waste. (a) The Municipality shall use all reasonable efforts to prevent the delivery of Unacceptable Waste to the Facility. However, the parties understand that in the normal course of operation of the Facility minimal quantities of Unacceptable Waste will be delivered to the Facility with Acceptable Waste.

(b) If WON discovers that Unacceptable Waste (other than Hazardous Waste) has been delivered to the Facility, WON may elect to process it, in which event the tonnage associated with such Unacceptable Waste shall be applied to the Municipality's Guaranteed Annual Tonnage and the full Tipping Fee with respect to such tonnage shall be due.

(c) If WON elects not to remove, process or dispose of such Unacceptable Waste, WON shall segregate it from the Acceptable Waste, to the extent practicable, and the Municipality shall be responsible for the removal thereof in a safe and proper manner within 48 hours. If the Municipality does not remove such Unacceptable Waste within 48 hours, WON may contract with third parties for the removal and disposal thereof on the Municipality's behalf, in which event WON shall be entitled to recover from the Municipality all of its Direct Costs associated with any such segregation, removal and disposal. WON's Direct Costs shall include all costs of removal, transportation, disposal and clean-up of such Unacceptable Waste in accordance with all applicable laws, rules and regulations, all fines and penalties related thereto and all costs related to health and safety risks with respect thereto, whether incurred by the Municipality directly or by WON on the Municipality's behalf, less any recovery from any other person, net of the expenses incurred in such recovery.

(d) To the extent any such Unacceptable Waste materially interferes with the normal operation of the Facility, the existence thereof shall be deemed an Uncontrollable Circumstance with respect to WON until the same is properly cleaned up, removed and disposed of.

(e) For removing Unacceptable Waste, WON shall contract only with such third parties that the Municipality shall have approved by written notice to WON, which approval shall not be unreasonably withheld or delayed. WON may request advance approval of one or more third parties in anticipation of the need for retaining such a third party under subsection (b) above. Any such third party that has been so approved in writing by the Municipality shall be deemed to remain so approved until the Municipality shall give WON written notice to the contrary.

Section 8.02. Obligations with Respect to Hazardous Waste. In addition to its obligations under Section 8.01 above, the Municipality shall be responsible, at its own cost and expense, for any handling, transporting, disposing and cleaning-up, all in accordance with

applicable laws, rules and regulations, of any and all Hazardous Waste delivered to the Facility under this Agreement. WON shall institute reasonable visual inspection procedures to detect Hazardous Waste but WON shall not be liable for its failure to detect the same. Upon discovery of any such Hazardous Waste, WON shall immediately segregate it from other incoming waste or sludge, to the extent practicable, shall notify the Municipality of its existence and location and shall assist the Municipality to the extent of available machinery and labor in the loading of such material on to trucks, provided that it can do so without significant cost or risk to its employees. The Municipality shall immediately remove and dispose of the same. WON shall have no obligation or liability whatsoever with respect to Hazardous Waste Costs, and the Municipality shall indemnify WON for any Hazardous Waste Costs incurred by or imposed upon WON as a result of or in connection therewith. The Municipality shall pay such Hazardous Waste Costs incurred by WON within fifteen (15) days of receipt of an invoice therefor accompanied by reasonable documentation of such Hazardous Waste Costs. If, after the date on which the Municipality makes a payment under this subsection, WON receives proceeds from insurance or any other third party for any Hazardous Waste Costs, WON shall reimburse the Municipality for its share of such proceeds. All performance guarantees and any other obligations of WON under this Agreement shall be adjusted to such extent as may be necessary to relieve WON of any incremental obligation, cost, risk, exposure, or liability which it might otherwise incur or be exposed to as a result of work stoppages or slowdowns, shutdown of or damage to or contamination of the Composting Plant, the Landfill or the MRF resulting from the delivery, handling, removing or clean-up of Hazardous Waste.

## ARTICLE IX

### Fees and Payments

Section 9.01. Start-Up Period Tipping Fees. After the Start-Up Date and prior to the Commencement Date of Operations, the Municipality shall pay WON a Tipping Fee equal to the Unit Billing Rate for each Ton of Acceptable Waste (excluding Acceptable Sludge) delivered to and accepted at the Composting Plant. Billings will be made under this paragraph monthly at the end of each month and will be payable thirty (30) days thereafter.

Section 9.02. Fees After Commencement Date of Operations. Commencing on the Commencement Date of Operations and for each Monthly Billing Period thereafter, the Municipality shall pay WON:

(i) A monthly Tipping Fee equal to the Unit Billing Rate multiplied by 1/12th of the Municipality's Guaranteed Annual Tonnage of Acceptable Waste (excluding sludge), minus the Tons of Wrongfully Rejected Waste (excluding sludge) delivered to and rejected at the Facility during such Monthly Billing Period, plus

(ii) A monthly Sludge Handling Fee equal to 1/12th of the annual Sludge Handling Fee, plus

(iii) A monthly MRF Fee equal to 1/12th of the annual MRF Fee, less

(iv) the Net Compost Credit for such Monthly Billing Period; provided, however, that if the Net Compost Credit, determined on a cumulative basis for a Billing Year (after taking into account the Net Compost Credit for the final Monthly Billing Period of such Billing Year) shall be less than zero, the cumulative amount of such negative Net Compost Credit for that Billing Year shall be credited to the monthly Tipping Fees for the final Monthly Billing Period of such Billing Year so that, for any Billing Year, the Net Compost Credit shall never be less than zero.

(b) At the end of each Billing Year, the Municipality shall pay the amount, if any, by which (i) the Unit Billing Rate multiplied by the number of Tons of Acceptable Waste accepted at the Facility (excluding sludge and excluding Recyclables accepted at the MRF) during such Billing Year in excess of WON's Guaranteed Annual Tonnage, exceeds (ii) the amounts paid or payable under subsection (a) above for such Billing Year.

(c) At the end of each Billing year, the Municipality shall be credited with 50% of the Net Recyclables Credit, if any, determined on a cumulative basis for such Billing Year.

Section 9.03. Insurance Recoveries. If, for any period in which WON does not accept Acceptable Waste at the Composting Plant due to an Uncontrollable Circumstance, WON receives proceeds from any business interruption insurance maintained with respect to the Composting Plant, the Tipping Fee determined under Section 9.02 shall be reduced by the net proceeds received from such insurance.

Section 9.04. Billing and Payments. (a) Commencing with the first receipt of Acceptable Waste at the Composting Plant, WON shall invoice the Municipality for the Tipping Fee calculated pursuant to Section 9.02 on a monthly basis covering the calendar month with respect to which such statement is rendered as described in this subsection (a) (the "**Monthly Billing Period**"). For each Monthly Billing Period (or any calendar month prior to the first Monthly Billing Period as to which any payment is due hereunder), WON shall render a statement to the Municipality which shall set forth, in the case of waste processed prior to the Commencement Date of Operations, the Tipping Fee calculated pursuant to Section 9.01 above and, after the Commencement Date of Operations, the fees calculated pursuant to Section 9.02 above, in each case estimated, to the extent necessary, pursuant to Section 9.04(f) below, and Direct Costs incurred by WON under Section 4.01 above.

(b) Each such statement shall include, for such Monthly Billing Period (i) operating data concerning the tons of Acceptable Waste and Acceptable Sludge accepted at the Composting Plant during such Monthly Billing Period, (ii) a statement as to Compost sales and Net Compost Credit for such Monthly Billing Period, (iii) a statement as to Unacceptable Waste or other waste rejected during such Monthly Billing Period, (iv) a statement of the amounts and identities of the persons or vehicles that delivered construction, demolition and land-clearing debris to the Facility during such Monthly Billing Period, (v) a statement as to Recyclables sales and the computation of the Net Recyclables Credit for the Monthly Billing Period and on a

cumulative basis for the Billing Year through the end of the Monthly Billing Period, and (vi) a summary, in reasonable detail, of all other amounts, if any, payable by the Municipality to WON hereunder for such Monthly Billing Period. Such statement shall include an itemization and Cost Substantiation as to all Direct Costs payable by the Municipality and shall also include a statement as to any insurance proceeds received by WON due to an Uncontrollable Circumstance and the calculation of any credit due under Section 9.03.

(c) The Municipality shall pay the fees and costs due to WON in immediately available funds within thirty (30) days after receipt of the invoice from WON, without set off for any amounts payable by WON to the Municipality hereunder.

(d) Indemnification payments required pursuant to Article XIII herein shall be payable within thirty (30) days following written demand therefor.

(e) Any payments not made by either party when due shall bear interest until paid at the rate of one percent (1%) per month, except that either party may grant to the other a 15-day grace period for reasons stipulated in writing.

(f) To the extent that the actual value of any item in any Monthly Billing Period statement cannot be accurately determined at the Monthly Billing Period statement date, such item shall be billed on an estimated basis calculated and reasonably justified by WON in good faith and an adjustment shall be made to reflect the difference between such estimated amount and the actual amount of such item on the Monthly Billing Period statement next following the date on which WON learns the exact amount of such item.

(g) Within ninety (90) days after the end of each Billing Year, WON shall deliver to the Municipality an annual settlement statement, which shall show the computation of the aggregate Tipping Fees, Sludge Handling Fees, MRF Fees and Net Compost Credit for such year, including correction to actual values of all estimated amounts, and all damages due to the Municipality pursuant to Section 9.06, if any, and all damages due to WON pursuant to Section 9.07. If the annual settlement statement reflects (i) any balance due to the Municipality, then WON shall within sixty (60) days of delivery of the annual statement pay such balance due to the Municipality or (ii) any balance due to WON, then the Municipality within sixty (60) days of receipt of the annual settlement statement shall pay to WON such balance due. This Section 9.04(g) shall survive the termination or expiration of this Agreement.

Section 9.05. Additional Payments. (a) Additional Capital Investment. WON shall use commercially reasonable efforts to make or cause to be made any changes to the Facility required on or after the Contract Date (x) as a result of any Change in Law to modify the Facility to comply with new requirements applicable thereto, (y) subject to the provisions of Article XI below, as a result of an Uncontrollable Circumstance, to the extent necessary to cause the performance standards specified in this Agreement, the Composting Plant Construction Plans or the Landfill Plans of Operation to be met after the occurrence thereof, and (z) any other changes requested or approved by the Municipality that increase the capacity or improve the efficiency of

the Facility (all such changes being referred to herein individually as a "Required Change" and collectively as "Required Changes").

(i) As soon as practicable after the occurrence of any such Required Change described above, WON shall give the Municipality Representative a description of the Required Change and the effect thereof on the performance of the Facility and WON's operating costs with respect thereto, and an estimate of the capital costs of any Required Change ("Additional Capital Investment"). The amount of such Additional Capital Investment for any Required Change shall equal one hundred percent (100%) of the reasonable capital costs and expenses for improvement, repair, replacement, maintenance or modification of the Facility expected to be incurred by WON for such Required Change, except for costs to be paid from insurance proceeds.

(ii) WON shall use all reasonable efforts to finance the estimated Additional Capital Investment not paid for with insurance on terms not less favorable than the term rate specified in clause (iv) below, and the Municipality shall fully cooperate with WON in obtaining such financing.

(iii) There shall be added to the amount of the Additional Capital Investment the cost of any payment and performance bonds obtained with respect to such project, capitalized interest, reserve funding requirements and other costs and expenses incurred by WON in obtaining any such financing, and there shall be deducted from such amount any investment earnings on the funds, if any, borrowed and invested pending expenditure, less any amounts required to be rebated to the Federal Government.

(iv) After the financing of the Additional Capital Investment, the Tipping Fee shall be increased by an amount equal to any principal and interest payments payable during each Monthly Billing Period with respect to any Indebtedness incurred in accordance with this Section 9.05. If WON does not finance all or any portion of the Additional Capital Investment, the Tipping Fee for each Billing Year shall be increased to include an amount equal to (1) the debt service which would have been payable during each applicable Monthly Billing Period on Indebtedness equal in principal amount to the Additional Capital Investment which was not financed over the shorter of (a) the remaining term of this Agreement, and (b) the useful life of the financed capital improvement in any such case, assuming level debt service payments and an interest rate equal to the prime rate of interest as published in the Wall Street Journal, as adjusted from time to time, plus two (2) percent per annum, or (2) any other amounts approved by the Municipality and WON. The basis for any such adjustment, described in reasonable detail, shall be delivered by WON to the Municipality Representative at least sixty (60) days before the proposed adjustment is to take effect.

(v) If the Additional Capital Investment incurred by WON is less than the estimates upon which the Tipping Fee adjustment was based, the surplus financing proceeds shall be applied to the reduction of the financing costs of such Additional Capital Investment, and the Tipping Fee shall be reduced by the reduction in Debt Service or assumed Debt Service.

(b) Certain Operating Cost Increases Resulting from Required Changes. If, after the Contract Date, any Change in Law or Required Change or the imposition of any real or personal property tax on all or any part of the Site or the Facility necessitates an increase in WON's operating or maintenance costs and expenses for any reason, including without limitation, any increase in the number or qualification of WON's labor or security forces or of personnel under contract to WON, or in the activities to be performed by them, or in the amounts or quality of materials used in connection with the operation or maintenance of the Facility, the Tipping Fee shall be adjusted by the amount of the reasonable cost of such increase in operating or maintenance costs and expenses for the period affected minus any applicable insurance proceeds recovered as a result of the Change in Law that are available to pay such costs. Normal business operations and maintenance costs existing prior to the Required Change or Uncontrollable Circumstance shall not be included in the Tipping Fee adjustment contemplated in this subsection (b). The basis for any such adjustment, in reasonable detail, shall be delivered by WON to the Municipality Representative at least 30 days before the proposed adjustment is to take effect.

(c) Insurance Proceeds; Third Party Payments. If after the effective date of any Tipping Fee adjustment under subsection (a) or (b) above, WON receives proceeds from insurance or any other third party for any loss or claim in respect of which the Tipping Fee adjustment was made, it shall recalculate the Tipping Fee adjustment taking the recovery into account and reimburse the Municipality for such Tipping Fee adjustment from such proceeds after deducting reasonable collection costs including reasonable attorneys' fees and expenses. This Section shall not apply to proceeds that were taken into account in the calculation of the Tipping Fee adjustment.

WON shall use reasonable efforts to effect the recovery of such proceeds (the cost of which shall be deducted from available proceeds hereunder), but (i) the taking of action by WON to attempt to effect a recovery shall not be a condition precedent to the effectiveness of any Tipping Fee adjustment referred to in subsection (a) or (b) above, and (ii) WON shall not be required under this paragraph to take any action if WON in good faith determines, after consultation with the Municipality Representative, that such action is not justified by the amount of any potential recovery, the likelihood of the recovery and the expense of such action.

(d) Books, Records and Reports. WON shall maintain all books, records and accounts necessary to record all matters affecting adjustments to, or pertaining to the calculation of, the Tipping Fee or other amounts payable by the Municipality under subsection (a), (b) or (c) of this Section 9.05. All such books, records and accounts shall be maintained in accordance with generally accepted accounting principles, shall accurately, fairly and in reasonable detail reflect all WON's dealings and transactions which affect any such adjustment to or calculation of the Tipping Fee and shall be sufficient to enable those dealings and transactions to be audited in accordance with generally accepted auditing standards. All such books, records and accounts shall be available for inspection and photocopying by the Municipality on reasonable notice, subject to the Municipality's obligations as to Confidential Information contained herein. All such books, records and accounts shall be kept by WON for at least two years (or longer period required by applicable law).

Section 9.06. WON Non-Performance: Damages. (a) If WON accepts from the Municipality and disposes of waste equal to or in excess of WON's Guaranteed Annual Tonnage in any Billing Year, WON will not owe the Municipality any damages pursuant to the provisions of this Agreement.

(b) If, during any Billing Year commencing on or after the Commencement Date of Operations, due to a WON Fault, WON fails to accept and dispose of Acceptable Waste delivered by the Municipality at least equal to WON's Guaranteed Annual Tonnage which results in Wrongfully Rejected Waste, then as the Municipality's sole remedy, WON will pay the Municipality liquidated damages equal to the product of (i) and (ii) below:

(i) The lesser of (A) the aggregate Wrongfully Rejected Waste for such Billing Year or (B) the difference between WON's Guaranteed Annual Tonnage and the Tons of Acceptable Waste delivered by the Municipality and accepted by WON at the Facility in such Billing Year; and

(ii) The Municipality's Direct Cost per Ton of disposal thereof in excess of what otherwise would have been payable hereunder, which shall include all excess handling and transportation costs (all subject to Cost Substantiation).

(c) The Municipality shall use all reasonable efforts to minimize its costs as described above and shall provide Cost Substantiation for the Direct Costs payable under subparagraph (b) above. The Municipality shall invoice WON for any amounts due under subparagraph (b) promptly following the end of each Billing Year and WON shall pay each such invoice within fifteen (15) days of receipt.

Section 9.07. Municipality Non-Performance. If WON is unable to process Acceptable Waste during any Monthly Billing Period due to Municipality Fault, WON shall accept, process and dispose of Acceptable Waste to the extent of available Facility capacity. The Municipality shall continue to pay the monthly Tipping Fee, and shall pay any increase in WON's Direct Costs of operation and maintenance of the Facility, for which WON shall provide Cost Substantiation. In addition, the Municipality shall pay any Direct Costs incurred by WON as a result of such Municipality Fault including, without limitation, any costs incurred by WON in the removal, transportation and disposal of Hazardous Waster, Unacceptable Waste or Residue that the Municipality has filed to timely remove from the Site.

Section 9.08. Adjustment of Unit Billing Rate and MRF Fee. (a) Effective on the Commencement Date of Operations and the first day of each Billing Year after the Commencement Date of Operations (each of which is referred to in this Section as an "Adjustment Date"), the Unit Billing Rate shall be increased to that dollar amount which is equal to the product of (i) the Unit Billing Rate specified in Section 1.01 and (ii) a percentage equal to (x) the Consumer Price Index, as hereinafter defined, for the month preceding the Adjustment Date, divided by (y) the Consumer Price Index for the month that is one year prior to the Commencement Date of Operations (which is referred to in this Section as the "Base CPT");

provided, however, that the adjusted Unit Billing Rate for any Billing Year shall never be less than the Unit Billing Rate specified in Section 1.01 hereof or the Unit Billing Rate in effect for the preceding Billing Year.

(b) Effective on each Adjustment Date, the Sludge Handling Fee shall be increased to that dollar amount which is equal to the product of (i) the initial Sludge Handling Fee specified in Section 1.01 hereof and (ii) a percentage equal to (x) the Consumer Price Index, as hereinafter defined, for the month preceding the Adjustment Date, divided by (y) the Base CPI; provided, however, that the adjusted Sludge Handling Fee for any Billing Year shall never be less than the Sludge Handling Fee specified in Section 1.01 hereof or the Sludge Handling Fee in effect for the preceding Billing Year.

(c) Effective on each Adjustment Date, the MRF Fee shall be increased to that dollar amount which is equal to the product of (i) the initial MRF Fee specified in Section 1.01 hereof and (ii) a percentage equal to (x) the Consumer Price Index, as hereinafter defined, for the month preceding the Adjustment Date, divided by (y) the Base CPI; provided, however, that the adjusted MRF Fee for any Billing Year shall never be less than the MRF Fee specified in Section 1.01 hereof or the MRF Fee in effect for the preceding Billing Year.

(d) For purposes of this Section, the Consumer Price Index, means the "Consumer Price Index," for Urban Wage Earners and Clerical Workers (CPI-W), Boston, Massachusetts, published by the Bureau of Labor Statistics of the United States Department of Labor. If such index shall be discontinued, the Municipality and WON shall choose a new index within 30 days of request by the other, and if the Municipality and WON cannot reach agreement on a new index they shall choose, and share the cost of, an appropriate mediator whose choice of an index as being most comparable to the discontinued index shall be final. In the event that, at any Adjustment Date under this Section, the Consumer Price Index for the preceding month is not yet available, an appropriate adjustment to the Unit Billing Rate, Sludge Handling Fee and MRF Fee shall be made when the same becomes available, and any additional Tipping Fees, Sludge Handling Fee and MRF Fees due shall be paid by the Municipality within thirty (30) days after receipt of an invoice from WON setting forth such adjustment.

Section 9.09. Disputes. If any invoice is disputed, the party disputing such invoice shall pay any amount not in dispute and shall promptly advise the other party of the basis of its dispute. The parties will then proceed to expeditiously settle all disputed items and any corrections shall reduce the amount otherwise due the following month. If the parties cannot resolve such dispute within thirty (30) days of such advice, either party may initiate proceedings pursuant to Section 14.16. If after resolution of such dispute it is determined that the party paying such invoices paid an amount in excess of the amount actually owed hereunder, the party receiving such excess shall refund such excess with interest thereon equal to the then current rate of interest on the Indebtedness issued to finance the Composting Plant.

## ARTICLE X

### Conditions Precedent

Section 10.01. Town Approval. Except for proceeding with design and permitting as provided in Section 3.01, the obligations and rights of the parties under this Agreement shall be subject to and conditioned upon Town Approval. WON may terminate this Agreement at any time after May 31, 1997 if Town Approval shall not have occurred and been confirmed to WON by written notice from the Municipality.

Section 10.02. WON Obligations. The rights, obligations and liabilities of WON hereunder shall be subject to the satisfaction or waiver by WON of the following conditions precedent, and WON shall not have any liability to the Municipality in the event any such condition precedent is not satisfied:

(a) The Municipality shall have approved the Landfill Plan of Operation and the Composting Plant Construction Plans.

(b) WON shall have obtained all necessary federal, state and local permits that will be required for the construction and initial operation of the Composting Plant and for the operation of the Landfill, including, if necessary, the approval of the Landfill Plan of Operation by the DEP.

(c) WON shall have arranged for the financing of the Composting Plant on terms and conditions reasonably satisfactory to it and all conditions precedent to the funding obligations of the lenders thereunder shall have been satisfied.

(d) No litigation shall be pending or threatened that might affect the rights or obligations of WON or the Municipality in any material respect.

Section 10.03. Termination. Each party shall use all reasonable efforts to satisfy such conditions at the earliest date possible. The Municipality and WON shall promptly acknowledge the satisfaction of such condition as soon as such satisfaction occurs. If the conditions precedent set forth in this Article X shall not have been satisfied, or waived by WON, by the first anniversary of the execution of this Agreement, then WON may terminate this Agreement upon five days' notice to the Municipality and upon such termination neither party shall have any liability to the other.

## ARTICLE XI

### Damage or Destruction to Facility Uncontrollable Circumstances

Section 11.01. Uncontrollable Circumstances. (a) Either party shall be excused from performance (except for each party's payment obligations hereunder) when its non-performance was caused directly or indirectly by an Uncontrollable Circumstance. The affected party shall give to the other party prompt written notice of the Uncontrollable Circumstance with reasonable full particulars concerning it. Thereupon the obligations of the party giving the notice so far as they are affected by the Uncontrollable Circumstance shall be suspended during, but no longer than the continuance of, the Uncontrollable Circumstance and for a reasonable time thereafter required to remedy the physical damages and/or to place the Landfill and/or Composting Plant back in operation.

(b) A party excused from performing any obligation under this Agreement pursuant to Section 11.01(a) shall promptly, diligently and in good faith take all reasonable action required in order for it to be able to commence or resume performance of its obligations under the Agreement, and shall keep the other party duly notified of all such actions required in order for it to be able to commence or resume performance of its obligations under this Agreement. Without limiting the generality of the foregoing, the party so excused from performance shall, during any such period of Uncontrollable Circumstance, take all actions reasonably necessary to obtain and/or terminate any temporary restraining orders, preliminary or permanent injunctions, approvals, licenses or permits needed to enable it to so commence or resume performance of its obligations under this Agreement.

(c) No Uncontrollable Circumstance shall excuse either party from its payment obligations hereunder. In addition, the Municipality shall not be liable for the loss by WON of any tax benefits relating to the Facility due to an Uncontrollable Circumstance.

(d) If during any Monthly Billing Period, due to the occurrence of an Uncontrollable Circumstance, there shall be a decrease or increase in WON's costs of operation and maintenance of the Composting Plant, the Tipping Fee shall be increased or decreased accordingly; provided that any increase in the costs of operation and maintenance of the Composting Plant shall be limited to the incremental Direct Cost increases to WON, for which WON shall provide Cost Substantiation; and provided further that if proceeds of any business interruption insurance or any other insurance providing similar coverage against the event or consequences of the Uncontrollable Circumstance shall be available to WON, the Tipping Fee payable in such Monthly Billing Period shall be reduced by the amount of such proceeds actually received during such period whether or not the Uncontrollable Circumstance still continues. WON shall use all reasonable efforts to reduce the costs of operation and maintenance of the Facility during any period when WON is excused from any of its obligations hereunder due to an Uncontrollable Circumstance.

Section 11.02. Destruction of Facility. If the Composting Plant or the Landfill is damaged or destroyed, or is taken by the exercise of condemnation, eminent domain or other mandatory taking process by a governmental entity, during the term hereof and the cost of repair or replacement of the property taken is covered by and can reasonably be accomplished from the proceeds of insurance or condemnation awards, WON shall repair or replace the property so taken if the repair, reconstruction or replacement can be reasonably accomplished by WON within the period covered by any business interruption insurance obtained pursuant to Schedule 3 hereto or by continued Tipping Fee payments hereunder. If the Composting Plant or the Landfill is damaged or destroyed by fire, the elements or other casualty or is lost by condemnation, eminent domain or other taking, to an extent that it cannot function as contemplated by the parties and to the extent that (i) it cannot be repaired or replaced within the period covered by business interruption insurance or by continued Tipping Fee payments hereunder or (ii) the cost of repair or replacement is not payable within such period from insurance proceeds or amounts provided by the Municipality or third parties, then WON may, at its option, restore, repair or reconstruct the Facility or terminate this Agreement by written notice to the Municipality within one hundred twenty (120) days after the date of damage or destruction. Said notice shall effectively terminate this Agreement thirty (30) days after the date of such notice.

## ARTICLE XII

### Default and Termination

Section 12.01. Events of Default. (a) Municipality Default. Each of the following shall constitute an Event of Default on the part of the Municipality:

(i) The persistent or repeated failure or refusal by the Municipality to substantially fulfill any of its obligations under this Agreement (other than its obligations to make payments to WON), unless excused by a prior default by WON; provided, however, that no such default shall constitute an Event of Default unless and until:

(A) WON has given prior written notice to the Municipality specifying that a default or defaults exist which will, unless corrected, constitute a material breach of this Agreement on the part of the Municipality; and

(B) the Municipality either has not corrected such default or has not initiated reasonable steps to correct the same within thirty (30) days of receipt of such notice, and thereafter does not continue to take reasonable steps to correct such default.

(ii) Failure by the Municipality to make any payment to WON under this Agreement within thirty (30) days of the date such payment is due.

(iii) The filing by or against the Municipality of a petition seeking relief under the Federal Bankruptcy Code or any Federal or State statute intended to provide relief for political subdivisions which are insolvent or unable to meet their obligations as they mature.

(b) WON Default. Each of the following shall constitute an Event of Default on the part of WON:

(i) The start-up of the Composting Plant has not commenced within a date twenty-six (26) months after the Contract Date or twelve (12) months (as extended for the duration of Uncontrollable Circumstances) after the later of: (x) the date that the Municipality has delivered its notice to proceed or (y) the date that all construction permits with respect to the Facility have been obtained, or

(ii) Applications for permits for construction of the Composting Plant and operation of the Landfill shall not have been submitted to the DEP within five (5) months after the Contract Date or final permits for construction of the Composting Plant and operation of the Landfill shall not have been issued by the DEP within ten (10) months after the Contract Date, unless WON shall have made substantial progress in obtaining permits and shall be diligently pursuing any permits not yet obtained.

(iii) The persistent or repeated failure or refusal by WON to substantially fulfill any of its obligations under this Agreement (other than its obligations to make payments to the Municipality), unless excused or justified by the occurrence of an Uncontrollable Circumstance or unless excused by a default by the Municipality; provided, however, that no such default shall constitute an Event of Default unless and until:

(A) the Municipality has given prior written notice to WON specifying that a default or defaults exist which will, unless corrected, constitute a material breach of this Agreement on the part of WON; and

(B) WON either has not corrected such default or has not initiated reasonable steps to correct the same within thirty (30) days of receipt of such notice, and thereafter does not continue to take reasonable steps to correct such default.

(iv) The written admission by WON that it is bankrupt, or the filing by WON of a voluntary petition as such under the Federal Bankruptcy Code, as amended, or the consent by WON to the appointment by a court of a receiver or trustee for all or a substantial portion of its property or business, or the making by WON of any arrangement with or for the benefit of its creditors involving an assignment to a trustee, receiver or similar fiduciary, regardless of how designated, of all or a substantial portion of its property or business; provided, however, that no such admission, filing, appointment of a receiver or trustee or arrangement shall constitute an Event of Default unless and until the lender of the Indebtedness shall have given written notice to WON and the Municipality that such admission, filing, appointment or arrangement shall be deemed an Event of Default.

(v) The entry of an order of relief against WON as a bankrupt after the filing of an involuntary petition under the Federal Bankruptcy Act, but no such order shall be regarded as final unless and until the same is no longer being contested by WON or until the order is no longer appealable; provided, however, that no such order shall constitute an Event of Default unless and until the lender of the Indebtedness shall have given written notice to WON and the Municipality that such order shall be deemed an Event of Default.

(c) Notwithstanding the foregoing, the Municipality agrees that before an Event of Default shall be declared with respect to WON (i) the lender or lenders of the Indebtedness (which shall be deemed to include the agent or trustee thereof) (the "Assignees") shall have the right exercisable at their sole option, to cure any such default, if curable by WON; (ii) the Assignees shall have an additional grace period of one hundred eighty (180) days beyond the expiration of any applicable grace periods in favor of WON to cure such defaults, and (iii) the Municipality shall accept the performance by the Assignees of WON's obligations as though WON had performed such acts. Any new operator selected by the Assignees shall be, in the reasonable judgment of the Municipality, skilled and experienced in the operation of facilities similar to the Composting Plant and the Landfill and (individually or with the assistance of the Assignees) financially capable of performing WON's obligations hereunder.

If a default under this Agreement is of such nature that it cannot practically be cured by the Assignees without first obtaining possession of the Facility, then the Municipality shall provide the Assignees with such additional cure periods as may be necessary for the Assignees first to obtain possession of the Composting Plant and then to proceed diligently to cure such default, such additional curative period not to exceed one hundred eighty (180) days.

If any default under this Agreement is cured, in any manner, during the pendency of any curative action initiated by the Assignees pursuant to the provisions hereof, then such default shall no longer be deemed a default under this Agreement.

In connection with the foregoing and to facilitate the exercise by the Assignees of their cure rights as set forth above, the Municipality agrees to provide the Assignees with notice of any event of default which the Municipality provides to WON or otherwise becomes aware of.

Section 12.02. Termination or Suspension for Cause by Party Not in Breach. (a) If an Event of Default occurs as provided in Section 12.01, the non-defaulting party may terminate this Agreement upon written notice thereof to the defaulting party; provided, however, that (i) the exercise of such right shall neither constitute an election of remedies nor a waiver of any rights, and (ii) neither party shall terminate this Agreement for failure by the other to pay an amount due hereunder if the unpaid amounts owed to or payable by the Municipality is less than \$50,000.

(b) If an Event of Default occurs as provided in Section 12.01(a)(ii), WON may suspend performance of its obligations under this Agreement upon written notice to the Municipality; provided, however, that the exercise of such right shall not constitute an election of remedies nor a waiver of any rights.

Section 12.03. Restoration of Site. Within ninety (90) days following the termination of this Agreement by reason of an Event of Default under Section 12.01(b) or the expiration of the Term or within one hundred eighty (180) days after the termination of this Agreement by reason of an Event of Default under Section 12.01(a), WON will remove all equipment and structures placed on the Site by WON, leaving the Site in essentially the same condition, normal use, normal wear and tear excepted, as the Site was in, with all buildings and structures that were on the Site, when WON began operations or any different condition in which the Landfill was put in accordance with this Agreement. The "same condition" shall mean a condition expected for buildings and structures of that age, with no broken or soiled surfaces caused by WON. Any buildings, structures and equipment that remain on the Site after said ninety-day or 180-day period shall become the property of the Municipality, and WON shall not be responsible for their removal.

Section 12.04. Other Available Remedies. Upon the occurrence of any Event of Default, the non-defaulting party may proceed to protect and enforce its rights hereunder and under the laws of the Commonwealth of Massachusetts by such suits, actions or special proceedings in equity or at law, or by proceedings in the office of any board, body or officer having jurisdiction, either for the specific performance of any covenant or agreement contained herein or in aid of execution of any power herein granted or for the enforcement of any proper legal or equitable remedy, all as such non-defaulting party shall deem most effectual to protect and enforce such rights.

## ARTICLE XIII

### Indemnification

Section 13.01. By WON. WON shall indemnify, defend, and save and hold harmless the Municipality and its officers and employees against and from all costs and expenses (including, but not limited to, reasonable attorneys' fees and court costs incurred in any court or administrative proceedings), claims and liabilities imposed upon or incurred by Municipality as a result of claims by third persons for (i) the performance (or non-performance) of WON's obligations under this Agreement, or (ii) injury to or death of person or for loss of or damage to property resulting from or arising out of or in connection with the negligent acts or omissions of WON, including the emanation from the Composting Plant of noxious or objectionable odors, to the extent that such costs, expenses, claims or liabilities are not covered by insurance.

Section 13.02. By the Municipality. The Municipality agrees that it shall, to the extent permitted by law, protect, indemnify and hold harmless WON, its affiliates, and their respective officers, employees, agents and invitees (the "**Municipality Indemnified Parties**"), from and against any and all costs and expenses (including, but not limited to, reasonable attorneys' fees and court costs incurred in any court or administrative proceedings), claims and

liabilities arising out of (i) the performance (or non-performance) of the Municipality's obligations under this Agreement, (ii) Hazardous Waste delivered to the Facility or (iii) personal injury to or death of any person or persons, or loss or damage to property or the environment, arising out of the performance (or non-performance) of the Municipality's obligations under this Agreement or arising from such Hazardous Waste; however, the Municipality shall not have any obligation to indemnify any Municipality Indemnified Party for any loss or claim due to the negligence or willful misconduct of any such Municipality Indemnified Party.

Section 13.03. Consequential and Punitive Damages. Neither WON's indemnity under Section 13.01 nor the Municipality's indemnity under Section 13.02 shall extend to consequential or punitive damages.

Section 13.04. Defense and Cooperation. In the event any action or proceeding shall be brought against either Party for which the Party shall seek indemnification from the other Party, as a condition of such indemnification the Party claiming indemnification shall promptly notify the other party and shall cooperate in the defense or settlement of such claim.

## ARTICLE XIV

### General Conditions

Section 14.01. Applicable Law and Venue. The law of the Commonwealth of Massachusetts shall govern the validity, interpretation, construction and performance hereof.

Section 14.02. Amendment. This Agreement may be amended with the written consent of WON and the Municipality acting with the approval of its Board of Selectmen.

Section 14.03. Severability. In the event any covenant, condition or provision of this Agreement is held to be invalid or unenforceable by a final judgment of a Court of competent jurisdiction, the invalidity or unenforceability thereof shall in no way affect any of the other covenants, conditions or provisions hereof, provided that such remaining covenants, conditions and provisions can thereafter be applicable and effective without materially changing the obligations of either party.

Section 14.04. Relationship of the Parties. Nothing herein shall be deemed to constitute either party a partner, agent, or local representative of the other party or to create any fiduciary relationship between the parties.

Section 14.05. Representatives. The authorized representative of each of the parties for the purpose hereof shall be such persons as the parties may from time to time designate in writing. Any such person so designated by the Municipality shall not have the authority to enter into any amendment to this Agreement without the express written approval of the Municipality's governing body.

Section 14.06. Notices. All notices herein required or permitted to be given or furnished under this Agreement by either party to the other shall be in writing, and shall be deemed sufficiently given and served upon the other party if delivered by hand or sent by mail, air courier, or facsimile transmission, provided that a confirmation copy is sent by certified mail, return receipt requested, all such notices being addressed or delivered as follows:

To Municipality:

Town of Nantucket  
Department of Public Works  
16 Broad Street  
P.O. Box 238  
Nantucket, MA 02554  
Fax No. (508) 228-7289  
Attention: Director, Department of Public Works

To WON:

Waste Options Nantucket, LLC.  
85 Tollgate Road  
Warwick, Rhode Island 02886  
Fax No. (401) 738-8169  
Attention: President

It is not intended that confirmation by certified mail be required for routine communications between the parties such as invoices or statements hereunder. Each party shall have the right, from time to time to designate a different person and or address by notice given in conformity with this section. The lender of the Indebtedness is not a "party" hereto such that written notice given in Sections 12.01(b)(iv) or (v) must conform to the provisions of this Section.

Section 14.07. Binding Effect. The Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors or assignees to the extent allowed by the laws of the Commonwealth of Massachusetts.

Section 14.08. Assignment and Transfer. This Agreement may be assigned by either party hereto only with the prior written consent of the other party (in the case of the Municipality, acting with the approval of its Board of Selectmen), except that without the consent of the Municipality, WON may with prior written notice to the Municipality:

(a) make such assignments, create such security interests in its rights hereunder and pledge such moneys receivable hereunder as may be required in connection with the Indebtedness, and upon receipt of notice from WON of such assignment, Municipality shall make all payments due hereunder directly to such assignee as designated by WON;

(b) assign its rights and obligations hereunder, or transfer such rights and obligations by operation of law, to any other entity with which or into which WON shall merge or consolidate, to which WON shall transfer all or substantially all its assets;

(c) transfer its rights and obligations hereunder to any subsidiary or other entity in which WON owns a controlling interest concurrently with such transfer, provided that WON shall guarantee the performance of such entity hereunder; or

(d) sell, lease, sublease or otherwise transfer its interest in the Composting Plant or any portion thereof to any person, but only if such sale, lease, sublease or transfer shall not materially interfere with WON's possession or operation of the Composting Plant as contemplated hereby or the performance of its obligations hereunder.

No such assignment or transfer shall relieve the assignor from any payment obligations due or to become due hereunder without the express written consent of the other party.

Section 14.09. Headings. Captions and headings herein are for the ease of reference and do not constitute a part of this Agreement.

Section 14.10. Entire Agreement. This Agreement (including the appendices and attachments hereto) constitutes the entire agreement and understanding of the parties hereto and expressly supersedes all prior agreements and understandings previously executed or agreed to by the parties concerning the subject matter hereof.

Section 14.11. Consents. To the extent that the consent of either party to this Agreement is required to any action of the other party pursuant to any provision of this Agreement, such consent will not be unreasonably withheld.

Section 14.12. Term and Termination of the Agreement. The Term of this Agreement shall begin upon Town Approval, and the Agreement shall remain in effect for a term which shall end twenty-five (25) years following the Commencement Date of Operations, subject to the termination rights of each of the parties as set forth herein (the "Term").

Section 14.13. Financing. The parties recognize that this Agreement is subject to approval by lenders financing the cost of the Composting Plant and if any such lenders require any reasonable modifications to the provisions, WON shall notify the Municipality of such requested changes and shall request the Municipality's consent with respect thereto.

Section 14.14. Further Assurances. The Municipality and WON each shall use all reasonable efforts to provide such information, execute such further instruments and documents and take such actions as may be reasonably requested by the other and not inconsistent with the provisions of this Agreement and not involving the assumption of obligations or liabilities different from, in excess of or in addition to those expressly provided for in this Agreement to carry out the intent of this Agreement.

Section 14.15. Limitation of Liability. (a) In no event shall the liability of either party under this Agreement, whether based on contract, warranty, tort (including negligence), strict liability or otherwise, extend to or include special, incidental, consequential or punitive damages of any kind whatsoever.

(b) It is understood and agreed to by the Municipality that nothing contained herein shall create any obligation of or right to look to any stockholder, director, officer or employee of WON or of any affiliate of WON for the satisfaction of the obligations of WON under this Agreement and that no judgment, order or execution entered in any suit, action or proceeding, whether legal or equitable, with respect to or in connection with this Agreement shall be taken against any stockholder, director, officer or employee of WON or of any affiliate of WON for the purpose of obtaining satisfaction and payment of any claim arising under or in connection with this Agreement.

Section 14.16. Arbitration. (a) If a dispute arises concerning the performance of any obligation of either party under this Agreement, or with respect to the increase in the fees to which WON may be entitled, the parties shall undertake expeditiously and in good faith to resolve the dispute.

(b) If the controversy cannot be resolved between the parties within two (2) weeks, the controversy shall be submitted to binding arbitration in Boston, Massachusetts in accordance with the then existing rules for commercial arbitration of the American Arbitration Association (hereinafter referred to as the "AAA"), and any decision of the arbitrator in any such arbitration, including the sharing of the cost of arbitration, shall, except as otherwise provided by law, be conclusive as to the matters submitted to the arbitrator, shall be final and binding upon the parties hereto, and may be enforced in any court of competent jurisdiction, except that an award of \$100,000 or more shall be subject to a de novo trial in such court

(c) Any rule of the AAA to the contrary notwithstanding, the issue under arbitration shall be heard and decided by a single arbitrator who shall be selected by agreement of the parties, provided that in the absence of any such agreement within two weeks after demand by either party, the arbitrator shall be designated by the AAA.

(d) The services of the arbitrator shall be paid for on a retainer basis with the fee to be shared equally between WON and the Municipality. Additional costs incurred in excess of the retainer fee resulting from items submitted for decision shall be paid for by the non-prevailing party. Where the decision is not clearly in favor of either party, then the percentage of such additional cost shall be paid by WON and the Municipality as decided by the arbitrator.

IN WITNESS WHEREOF, WON and the Municipality have executed this Agreement as of the date first above written.


TOWN OF NANTUCKET

WASTE OPTIONS NANTUCKET, LLC

By \_\_\_\_\_  
Arthur Desrosiers, Chairman  
Board of Selectmen

By \_\_\_\_\_  
Charles H. Gifford, III, Manager

By \_\_\_\_\_  
Libby Gibson, Town Administrator

By  \_\_\_\_\_  
Town Counsel, as to form

By \_\_\_\_\_  
Bruce Miller, Director of Municipal Finance, as  
to certification of financing

IN WITNESS WHEREOF, WON and the Municipality have executed this Agreement as of the date first above written.

TOWN OF NANTUCKET

By Arthur Desrosiers  
Arthur Desrosiers, Chairman  
Board of Selectmen

WASTE OPTIONS NANTUCKET, LLC

By Charles H. Gifford, III  
Charles H. Gifford, III, Manager

By \_\_\_\_\_  
Libby Gibson, Town Administrator

By \_\_\_\_\_  
Town Counsel, as to form

By Bruce Miller  
Bruce Miller, Director of Municipal Finance, as  
to certification of financing

## SCHEDULE 1

### EQUIPMENT TO BE FURNISHED BY MUNICIPALITY

#### LANDFILL EQUIPMENT

<u>EQUIPMENT</u>	<u>MAKE</u>	<u>YEAR</u>
TRASH COMPACTOR	REX	1987
RUBBER TIRE LOADER	CAT 966E	1990
DOZER	CAT D6H	1995
GRINDER	MORBARK	1996
HOIST TRUCK	INTERNATIONAL	1997
ROLL-OFF CONTAINERS	(6) 30 CUBIC YARD	1995
SCALE HOUSE/SCALE/COMPUTER		1996

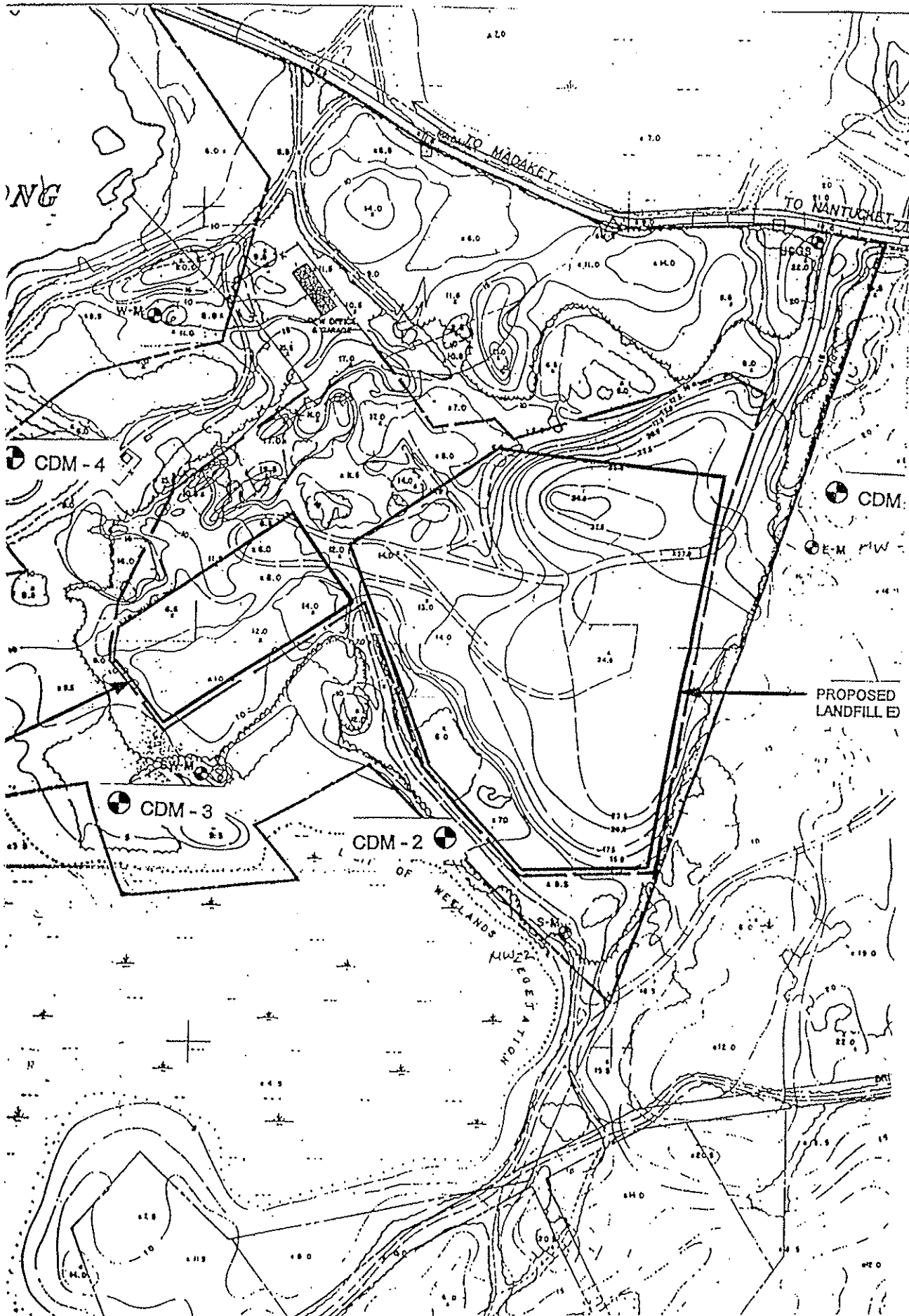
ALL TOOLS AND EQUIPMENT NOW  
USED IN THE LANDFILL OPERATION  
AS LISTED ABOVE

#### MRF EQUIPMENT

<u>EQUIPMENT</u>	<u>MAKE</u>	<u>YEAR</u>
FORK LIFT TRUCK	CAT	1996
ALL CONTAINERS, CAGES, TOOLS, EQUIPMENT NOW USED IN THE OPERATION OF THE MRF OTHER THAN BOBCAT SKID STEER LOADER		1996

SCHEDULE 2 - SITE

(To be superseded by definitive description and survey.)



See Notice of Hearing  
Book 161  
Page 94

BOOK 125 PAGE 333

ORDER OF TAKING

At a meeting of the Board of Selectmen for the Town of Nantucket held on the 18th day of December 1963 it was voted to take by eminent domain the following described parcel of land situated in said Town of Nantucket for the purposes of a dump, said taking being authorized by vote under Article 50 of the Annual Town Meeting held March 5, 1963, and being land shown on Plan of Josiah S. Barrett, Engineer, dated June 15, 1963, and recorded herewith:

NORTHERLY: by Vadeket Road, on various courses totalling about 2,249 feet;

EASTERLY: by land of owners unknown, 1995.67 feet;

SOUTHWESTERLY, SOUTHERLY, and  
NORTHWESTERLY: on various courses, by other land of the Town of Nantucket, about 2,903 feet; and

WESTERLY: by Long Pond.

That the interest of the Town taken in the land is a fee; that there are no trees or structures on the land to be taken and the purposes for which said land is taken is for the purposes of a town dump.

The land taken is owned by owners unknown, or by the Town of Nantucket, and damages of Ten Dollars for the area taken, for "owners unknown", is hereby awarded.

Samuel H. Killham  
Chairman

JAN 10 1964 3:10 PM

Received and Entered

Attest Josiah S. Barrett  
Register

Franklin Barrett  
Frederic E. Whitman

Walter S. Barrett

161 94

125/102

THE COMMONWEALTH OF MASSACHUSETTS  
NANTUCKET  
CITY OR TOWN

BOARD OF APPEALS

October 9, 1977

NOTICE OF VARIANCE

Conditional or Limited Variance or Special Permit

(General Laws Chapter 40A, Section 18 as amended)

Notice is hereby given that a Conditional or Limited Variance or Special Permit has been granted

To Town of Nantucket  
Owner or Petitioner

Address

City or Town Nantucket, Mass. 02554

Ref. L.C. Plan 4237 A and L.C. Plan 2565C A, land on southerly side Kadaket Rd., contiguous to Sherburne Associates,  
Identify Land Affected

City Nantucket Board of Appeals affecting the rights of the owner with respect to the use of premises on Kadaket Road Nantucket  
Street City or Town

the record title standing in the name of Town of Nantucket  
Street City or Town

whose address is same as above  
Street City or Town State

by a deed duly recorded in the County Registry of Deeds in Book

Page Registry District of the Land Court

Certificate No. Book Page

The decision of said Board is on file with the papers in Decision or Case No. C22-77

City Nantucket  
in the office of the Town Clerk

Certified this 9th day of October 19 77.

Board of Appeals: Wayne J. Quinn Chairman  
Board of Appeals

Clerk  
Board of Appeals

NOV 14 1977 19 at 10 o'clock and 59 minutes A.M.

Received and entered with the Register of Deeds in the County of Nantucket  
Book 1161 Page 94

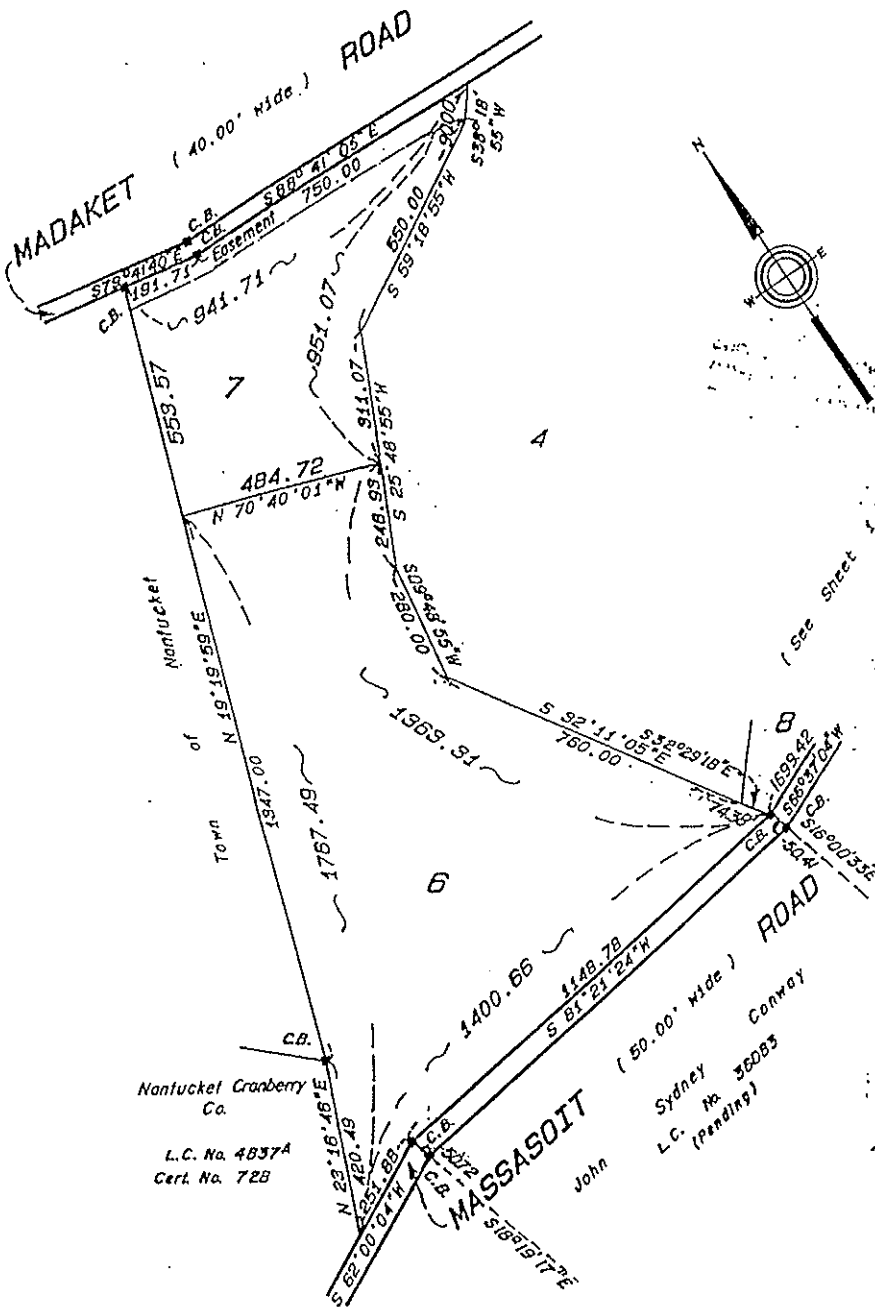
ATTEST  
Joseph A. Baratti  
Register of Deeds

Notice to be recorded by Land Owner.

MEMORANDA OF ENCUMBRANCES ON THE LAND DESCRIBED IN THIS CERTIFICATE 10,45

DOCUMENT NUMBER	KIND	RUNNING IN FAVOR OF	TERMS	DATE OF INSTRUMENT	DATE OF REGISTRATION	SIGNATURE OF ASSISTANT RECORDER	DISCHARGE
23951	Special Permit	Board of Appeals to Open Land Fund, Inc.	re: removal of fill for Town Land-fill	1981 April 29	YEAR & MONTH 1981 May 20 DAY & HOUR 330 PM		
25527	Attachment	Land Vest Inc.	#1,200.00	1982 June 7	1982 June 8	Margaret C. Ligato	see Doc. 25612
25612	Dissolution of Attachment	Open Land Fund, Inc.	re: Doc. 25527	1982 June 29	1982 June 30		
25658	Agreement	Open Land Fund, Inc.	re: use of lot 6 as a borrow pit	1982 June 29	1982 July 9		
62745	Variance	Board of Appeals vs. Town of Hanover	re: construction of composting facility	1993 Sept 8	1993 Dec 10	Andrew M. Chedwick	

SHEET 2 of 2



Scale of this plan 300 to an inch

N.B.

This plan filed with Certificate No. 10,145

*Sancti Spiritus Registry District*

JUNE 29, 1982

RECEIVED FOR REGISTRATION

4 O'CLOCK 02 m P. M

While plan filed with Certificate No. 10,145

Attest Margaret C. Pignato  
Assistant Recorder

LOT 9+8 ON PLAN No. 35656-C FILED  
WITH CERTIFICATE No. 10145 HAS  
BEEN Subdivided AND PLAN No. 35656-D  
SHOWING SUCH CHANGES IS FILED WITH  
CERTIFICATE NO. 10354  
FURTHER CERTIFICATES FOR SAID LOT 5  
7+8 ON SAID EARLIER PLAN WILL  
NOT BE ISSUED UNLESS AUTHORIZED BY  
THE COURT. (NEW Lots 9-12)

### SCHEDULE 3

#### INSURANCE AND BONDS

Insurance. Prior to the Commencement Date of Operations, WON shall maintain, or cause its contractors to maintain, standard and customary builders risk insurance and payment and performance bonds. After the Commencement Date of Operations, WON shall maintain the following insurance:

(a) Workers' Compensation Insurance. Workers' Compensation Insurance required by law, with WON as named insured.

(b) Employer's Liability Insurance. Employer's Liability Insurance with limits not less than \$500,000 per accident or employee disease, with WON as named insured and with no deductible amount.

(c) Comprehensive General Liability Insurance/- Broad Form. Comprehensive General Liability and Property Damage Insurance, with Contractual Liability and Products/Completed Operations coverage, with primary limits of liability of \$1,000,000 combined occurrence for bodily injury and property damage, and \$1,000,000 combined aggregate for bodily injury and property damage, with the Municipality named as an additional insured on liability coverage and with waiver of subrogation as to the Municipality under property damage coverage. The general aggregate shall apply separately to this project/location.

(d) Comprehensive Automobile Liability Coverage. Comprehensive Automobile Liability Insurance with a combined single limit for bodily injury and property damage of at least \$1,000,000, including same coverage for all owned, hired and non-owned auto use.

(e) Excess Umbrella Liability Coverage. Excess Umbrella Liability Insurance in the amount of \$1,000,000 with a self-insured retention of \$10,000 or less, with the Municipality named as an additional insured.

(f) "All Risk" Property Damage Insurance. Insurance for loss, damages or destruction to the Composting Plant (including boiler and machinery) caused by "all risk" peril in an amount at all times equal to the full replacement value of the Composting Plant (including, to the extent available on commercially reasonable terms, insurance for such loss caused by flood or earthquake), with WON as named insured and waiver of subrogation as to the Municipality.

(g) Business Interruption Insurance. Business Interruption Insurance.

(h) Boiler and Machinery Insurance. Boiler and Machinery coverage on a comprehensive basis sufficient to replace boiler and machinery items, with a deductible amount of \$25,000.

All policies shall provide for at least 30 days' prior written notice to the Municipality in the event of cancellation, termination or non-renewal. All policies shall be with insurers rated A- or better in the most current issue of Bests Insurers Ratings at the time the policies are contracted.

## SCHEDULE 4

### ACCEPTABLE SLUDGE

Acceptable Sludge shall comply with the regulations of the Sludge Rules of the Environmental Protection Agency contained in 40 CFR Section 503, or any successor provision, relating to the quality (pollution limits) of Acceptable Sludge. Such regulations currently provide that Sludge shall contain no more than the following maximum concentrations of sludge constituents:

	Concentration in ppm (dry weight)
Arsenic (As)	41
Cadmium (Cd)	39
Chromium (Cr)	1200
Copper (Cu)	1500
Lead (Pb)	300
Mercury (Hg)	17
Molybdenum (Mo)	18
Nickel (Ni)	420
Selenium (Se)	36
Zinc (Zn)	2800

The Municipality shall provide WON with a copy of each report, analysis or test results obtained by the Municipality with respect to the quality of its sludge (which tests shall be conducted in accordance with, and no less frequently than required by, all applicable laws) as soon as such results become available. At WON's request, the Municipality shall notify WON when each sample is to be taken, shall permit WON to be present during each sampling and will provide WON with a split sample of each test material for independent testing and analysis.

Acceptable Sludge may include septic tank waste (septage), restaurant grease trap waste (not to exceed 2%), and portable toilet waste. The requirements of above-referenced federal sludge regulations for reduction of pathogens and vector attraction shall not apply to Acceptable Sludge delivered to the Composting Plant.

## CONCEPTUAL LANDFILL OPERATION PLAN

### 1.0 GENERAL

Upon execution of a contract between the Town of Nantucket and Waste Options of Nantucket (WON), WON will assume responsibility for operations of the Nantucket Sanitary Landfill. Operations conducted prior to compost plant start-up will be governed under an interim contract. This document describes the activities which will occur..

### 2.0 LANDFILL OPERATIONS IN SUPPORT OF THE COMPOST PLANT

Once the compost plant is operational, operations at the landfill will consist of placement of waste into lined cells, construction of lined cells, excavation of previously placed waste from under the temporary cap, placement of a vegetative support layer on the temporary cap and construction of the final cap as the lined cells are filled.

#### 2.1 Acceptance of Waste

Once the compost plant is operational, the only waste coming into the landfill will be by WON vehicles carrying residuals from the compost plant or from vehicles carrying bulky waste directed to the landfill by WON employees. All waste brought to the landfill will be placed in lined cells. Operations within the lined cells will be conducted in a manner to minimize leachate generation. This will include the use of tarps if necessary.

#### 2.2 Construction of Lined Cells

WON will construct lined cells such that one year's capacity is available at all times. As landfill space is utilized, new base will be prepared as necessary.

### **2.3 Excavation of Waste**

WON will excavate waste from the old landfill, transport it to the compost facility and process the waste. The compost facility is being designed to accommodate 60 tons per day of waste. During peak waste generation periods (i.e., summer months), the plant will primarily take new waste. During non-peak periods (including slow days during summer months), old waste will be excavated from the landfill and processed. It is expected that on some days, 50 tons per day will be excavated and processed. In any event, it is anticipated that at a minimum, one ton of waste will be excavated and processed for every ton of waste placed in the landfill.

Precautions will be taken to minimize the creation of nuisance conditions during excavation. It may be necessary to operate a landfill gas extraction system at the construction face during excavation periods to prevent the escape of significant quantities of landfill gas. The extracted gas would be burned in a temporary flare system.

The excavation process will consist of movement of the soil from over the membrane. Once the soil is moved, the cap will be first out and opened so that the waste from underneath may be excavated. At the end of the day, the membrane cap will be pulled over the excavation area and secured with dirt.

### **2.4 Placement of a Vegetative Support Layer**

Processed compost mixed with on-site soils will be utilized as a vegetative support layer over the temporary cap.

## **2.5 Construction of a Final Cap System**

As the lined landfill is brought to final grades, the final cap system will be constructed. The final cap system will be constructed to conform to plans approved by the Massachusetts Department of Environmental Protection.

## SCHEDULE 6

### **PROPOSED OPERATIONAL CONCEPT WASTE OPTIONS OF NANTUCKET CO-COMPOSTING FACILITY NANTUCKET, MASSACHUSETTS**

The initial step in the composting facility is the weighing of waste vehicles as they enter the facility. This will be accomplished by use of the existing scales at the Materials Recycling Facility. Data will be fed to the computer link, located in the scalehouse. After weighing, the truck will be directed to the facility tipping floor. Waste material will be discharged on the tipping for loading into the in-vessel digesters. Upon leaving the facility, the vehicles will pass over the exit scale for final weighing.

Once on the floor, the MSW will be moved via a front-end loader to a hopper which feeds the loading conveyor.

The facility will be able to process sewage (biosolids) in either liquid (3 to 8 percent solids content) or dewatered (up to 24 percent solids) form. Dewatered sludge is delivered to the Tipping Floor where it is loaded into the digesters in much the same manner as the MSW. Liquid wastes will be stored in storage tanks located near the digesters. The liquid is pumped from the tank into the digesters through a piping network fitted with line flow meters and powered by positive displacement pumps. Sludges are tested periodically to insure acceptability. The rough rule of thumb is two wet tons of MSW to one wet ton of sewage sludge which relates to the carbon and nitrogen requirements of composting. The MSW provides the carbon and some nitrogen, while the sludge contains the nitrogen source and is also the primary source of process water. At times when a full complement of sludge is unavailable, additional water and nitrogen can be supplemented.

Once the MSW has been delivered and inspected, it is moved via a belt conveyor into the pit area. Hydraulically operated, piston arm rams are used to push the MSW into the feed end opening of the digesters. These rams are located within the concrete tipping floor and are fitted with side panels to

insure the MSW is directed into the ram pit. The rams are capable of loading one (1) ton per minute, although they normally operate at much slower speeds.

Within the digester, a biochemical separation of organic materials from non-compostable items occur at this stage of rapid rate composting. In this regard, it is important to distinguish the non-grind/shred system from the mixed waste composting process. The digester can process a mixed waste stream but only the organic or biodegradable fraction is converted to compost. The net result is that the non-compostable matter, which remains largely intact in this system, may be readily screened out and thus removed prior to the aerated pile phase. This allows the end project compost to be comprised of only biodegradable matter.

Organic materials within the feedstock are consumed by the microbes within the digester and are converted to compost. Microbial activity stimulates the decomposition process within several hours after loading the waste and continues at a more intensive rate over the three day process. Continuous rotation of the digester animates the feedstock providing for uniform air passage through each of the internal chambers. Temperatures during the digester phase are regulated by the amount of reverse process air that is fed into the digester. Process air from the aeration floor area as well as some fresh air is supplied to the digester end of the digesters by means of positive displacement blower mounted to a universal jointed air manifold. Temperatures are maintained between 110 and 155 degrees F, by cycling on and off the blowers, to ensure a maximum rate of composting and an optimum environment for the microbes.

For the facility, it is planned to install one or two digesters with a total capacity to handle at least 80 tons per day of MSW and approximately 40 tons per day of sludge. The digester is located between the Tipping Building and the Digester Discharge Building. The digester is constructed of carbon steel plating with internal longitudinal flat bar stiffeners. Each of the three compartments is fitted with a manhole, temperature gauges and sample posts for testing the conditions of the material in process. The digester operates much the same way as cement or lime kilns in a slowly (.5 to 1 rpm) rotating

speed. The exterior of the digester is covered with a sprayed-on polyurethane insulation and topped with an elastomeric paint coating.

The first chamber receives ambient temperature waste and thus has the lowest maximum temperature of approximately 120 degrees F., once the waste is acclimated. The second chamber has the highest temperature of approximately 155 degrees F., owing to a completely acclimated mass of material. The biomass of the third chamber is fully acclimated but receives cooler temperature air to aerate the digester. However, air is warmed naturally in the chamber as it flows through the mass and into the rest of the digesters, temperatures in chamber three are typically in the 130 degree F. range.

A small portion of the composting material is retained in each of the chambers when transferring from one to the next, which acts as an inoculant to hasten the development of temperature and microbial colonization. The warm, moist air flowing through the digester significantly oxidizes odors generated from the putrescible waste materials. Thus, the digester is actually the first component of a complete air processing system.

At the end of the detention period, a mixture of rough compost and inorganic materials are discharged via hydraulically controlled discharge doors and onto a floor mounted toughing, belt conveyor. This discharge conveyor runs the length of the discharge building, which encloses the final 10' of the digesters as well as the discharge conveyor. The discharge conveyor moves the material from the discharge area to another belt conveyor which, in turn, conveys the material to the Primary Trommel Screen which is housed in a similar design, pre-engineered metal building with concrete slab flooring.

The rotary Trommel Screen is elevated and mounted on a concrete wall support base and serves to separate the rough compost from the inorganic fraction. The material separation is done through the 1.25" diameter perforations of the steel screen sheets. The approximate 9' diameter by 45' diameter long trommel has several steel screen plate sections through which the mostly organic fraction falls. The rejected materials (over 1.25" diameter) are discharged from the trommel onto a feed conveyor

the leads to the eddy current aluminum separation system and, subsequent to that, the magnetic separator for the removal of any ferrous steel materials. The material that remains after these recycling processes is conveyed back to the Tipping Floor where it is loaded into open top trailers for disposal at the Nantucket Landfill. The rejected material is inert and can safely be deposited into the landfill, which is permitted for only non-putrescible wastes.

The generally all organic fraction that passes through the screen is moved via a front-end loader to the next step in the process, the aeration floor. The Aeration Building is also a pre-engineered metal building type and also contains a concrete slab floor. The Aeration Building will have two aeration bays. The bays are bounded on both sides by a reinforced concrete wall, upon the top of which a steel guide rail system is embedded. The floor of the bay is fitted with aeration slots approximately 75' of the bay width. The slots are covered by extruded plastic, grating type covers with ventilation slits. A mixture of conditioned and fresh air is blown through the channels created by the slotted floor. The air passes out the slits in the grating cover and migrate up, into and ultimately out of the compost on the floor. The air supply serves to provide needed air to the microbes as they continue the composting process.

A temperature feedback mechanism controls the activation and deactivation of the aeration blowers to maintain the temperature in a range of preset points (both high and low levels) which maximizes conditions for compost stabilization and curing. The system is on-line continuously (when piles are agitated, probes are removed and replaced upon completion) and will make the appropriate aeration blower adjustments.

In addition, an automated compost turning machine moves through the pile periodically to agitate, aerate and move the material, further insuring complete aeration and air supply.

an important feature of the aeration building is the significant air handling/odor control system which is used to process the air produced from the composting process. The humid air is contained within

the building, collected via exhaust fans and duct network and directed out of the building and into the biofiltration system.

## SCHEDULE 7

### DESIGN AND PERMITTING

Compost Plant Plan Preparation	Months 1 through 4
Submit Notice of Change to MEPA	45 days after Contract Date
Prepare Solid Waste Application	Months 1 through 4
Prepare Air Permit Application	Months 1 through 4
Submit Applications to DEP	5 months after Contract Date
DEP Review	Months 5 through 9
Draft Permits Issued by DEP	9 months after Contract Date
Final Permits issued by DEP	10 months after Contract Date
Begin Compost Plant Construction	14 months after Contract Date
Compost Plant Start-Up	26 months after Contract Date

Amendment #1

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W03055

April 10, 1997

Town of Nantucket  
Board of Selectmen  
Town and County Building  
16 Broad Street  
Nantucket, Massachusetts 02554

Re: Waste Service Agreement

Dear Board of Selectmen:

Following our several discussions on points of concern, Waste Options, Inc. agrees to amend the Waste Service Agreement as set forth hereinafter:

1. Bedminster Bioconversion Corporation will guarantee that the patented Bedminster process will work, that construction will be completed in accordance with the Agreement, and that mass balances, production of usable compost and residuals, and odor related issues will be at least at the level of other operating Bedminster plants.

As you know, "Schedule 6" of the Waste Service Agreement deals with the Bedminster process. While the name Bedminster did not appear, the process described therein fits only one (1) technology in the world, that being the Bedminster Bioconversion technology.

Additionally, Waste Options, Inc. is responsible for the payment of fines imposed by governmental authorities under 3-2 (e) of the Interim Service Agreement. As you are aware, it is that Agreement that controls until the compost plant is built. Therefore, the Town is protected from fines for delay.

2. Waste Options, Inc. agrees to charge the Town \$70.00 per ton for all tonnage in excess of 29,000 tons, annually,

3. As a further clarification, Waste Options, Inc. and Bedminster Bioconversion Corporation are responsible for any additional capital costs required as a result of increased tonnage. This does not apply where the Federal, State or Town governments have mandated changes.

W03056

Board of Selectmen  
April 10, 1997  
Page Two

4. Waste Options, Inc. agrees that it will negotiate in good faith with the Town, to extend the operation of the Agreement at the end of the 25 year period. If an agreement cannot be reached, the Town will have the option to purchase the facility for One Million (\$1,000,000.) Dollars or fair market value, whichever is less.

5. Waste Options, Inc. agrees that it will not charge a tip fee for compostable leaf and yard waste.

6. Waste Options, Inc. agrees that the CPI index will be charged against only the first \$70.00 of the \$90.00 per ton tip fee. 7

In closing, as I have said previously, Waste Options, Inc. guarantees that it will, after passage of the Waste Service Agreement on April 14th, immediately begin discussions with the Town to explore and evaluate alternative funding mechanisms for the construction and operation of the facility, that may then result in further reductions in the price per ton.

Thank you.

Sincerely yours,

Charles H. Gifford III

Charles H. Gifford, III, President

Arthur L. Desnochen, Chairman

Charles Gardner

Pamela L. Killen

Timothy M. Soverino

Vincent M. Vacca

W03057

Amendment #2

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W03058

# Waste Options

*Solving Environmental Problems*

Board of Selectmen  
Town of Nantucket  
16 Broad Street  
Nantucket, Massachusetts 02554

May 29, 2002  
L-1172

Re: Amendment No. 2 to the Waste Service Agreement



Reference is made to the Interim Service Agreement dated December 1996 (the "Interim Service Agreement") between Waste Options, Inc. ("WOI") and the Town of Nantucket, Massachusetts (the "Town") and the Waste Service Agreement dated December 1996 as amended by letter Agreement dated April 10, 1997 (the "Waste Service Agreement") between Waste Options Nantucket, LLC ("WON") and the Town under which WON has constructed a composting plant and operates the Town's materials recycling facility ("MRF") and landfill (collectively, the "Facility"). This will confirm our agreement as follows:

1. Background. The parties have had certain disputes regarding the performance of their respective obligations under the Interim Service Agreement and the Waste Service Agreement. WON and the Town have entered into Administrative Consent Orders ("ACOs") with the Massachusetts Department of Environmental Protection ("DEP") which require that a facility to process construction and demolition waste ("C & D Facility") be constructed in conjunction with the continued operation of the landfill, composting facility and MRF. The parties acknowledge that the requirements of the ACOs constitute "Required Changes" that, under the provisions of Section 9.05 of the

Waste Options Nantucket, LLC  
One State Street, Suite 600, Providence, Rhode Island 02908  
401/453-1115 - 401/453-5115 fax  
www.wasteoptions.com

W03059

Waste Service Agreement, trigger an increase in tipping fees to cover additional capital and operating costs of WON. The parties have resolved their previous disputes and agree upon the amount of the increases in fees to WON as set forth herein.

2. Increased Fees. WON and the Town agree that, effective June 1, 2002, the following fee increases shall be effective: (a) with the fees payable under Section 9.02 of the Waste Service Agreement, the Town shall pay WON a "C & D Facility Fee" in the amount of \$25,000 per month; and (b) the Unit Billing Rate for Mixed Waste (currently \$97.48 per ton) shall be increased by \$40.00 per ton to \$137.48 per ton. WON acknowledges and agrees that such fee increases are adequate to support the costs of constructing the C & D Facility and that all revenues provided for in the Waste Services Agreement are adequate to perform the services required thereunder, subject to escalation in accordance with Section 9.08 of the Waste Service Agreement.
3. Mixed Waste. For purposes hereof, "Mixed Waste" shall mean Acceptable Waste that is construction and demolition waste (as defined in the regulations of the DEP) and any other waste that is delivered to the Facility in a manner (by reason of bulk, material composition, or not being pre-sorted) that is not acceptable at the MRF, the Composting Plant or the Landfill. Under current reporting practice, "Mixed Waste" consists of materials categories 825 (mixed non-commercial waste) and 925 (mixed commercial waste).
4. Resolution of Outstanding Payment Disputes. The parties acknowledge that increased fees set forth in Paragraph 2, above, satisfies in full the Town's obligations to increase fees set forth in paragraph 15B of the Third Amendment, dated January 4, 2002 to the ACO between the Town and the DEP, dated July 31, 1996, as previously amended November 21, 1997 and September 20, 2000.

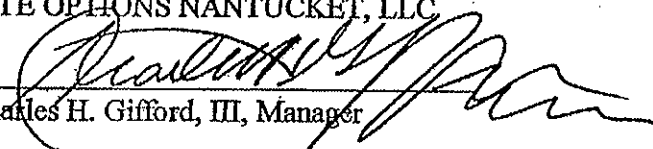
5. Continuing Obligations. The parties acknowledge and agree to be bound by their respective continuing obligations under the Waste Service Agreement and the ACO.
6. Resolution of Claims. The parties agree that the mutual covenants and undertakings set forth in the Letter Agreement constitute a complete settlement of all claims and disputes among the parties relating to the Interim Service Agreement and the Waste Service Agreement as of the date hereof, including the disputed recyclables revenue and other pending disputes referenced in the parties' letter agreement dated March 13, 2002.
7. Definitions. Capitalized Terms that are defined in the Waste Service Agreement and not defined in this letter agreement shall have the meanings assigned by the Waste Service Agreement.

Please confirm your agreement to the foregoing by signing and returning a copy of this letter. Subject to the Consent of KeyBank National Association, the leasehold mortgagee of the Facility, this letter will then constitute a binding agreement between WON and the Town, to be designated and referred to as Amendment No. 2 to the Waste Service Agreement.

Very truly yours,

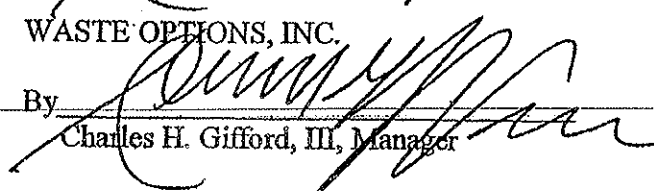
WASTE OPTIONS NANTUCKET, LLC

By

  
Charles H. Gifford, III, Manager

WASTE OPTIONS, INC.

By

  
Charles H. Gifford, III, Manager

**Amendment #3**

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W03063

**Town and County of Nantucket  
Board of Selectmen • County Commissioners**

Ann Murphy, Chairman  
Matthew G. Fee  
Timothy M. Soverino  
Frank T. Spriggs  
Bruce L. Watts



16 Broad Street  
Nantucket, Massachusetts 02554

Telephone (508) 228-7255  
Facsimile (508) 228-7272  
[www.town.nantucket.ma.us](http://www.town.nantucket.ma.us)

G. Elizabeth Gibson  
Town & County Administrator

**AGREEMENT REGARDING FEE ADJUSTMENTS**

Waste Options Nantucket, LLC ("WON") and the Town of Nantucket, Massachusetts, by and through its Board of Selectmen, ("Town") agree that:

1. Beginning May 15, 2003; and, for the remainder of the Town's fiscal year 2003 and for fiscal year 2004, the tipping fees paid to WON and the Town's landfill user fees will be revised as follows:

WON Tipping Fee Revisions

Material Code	Type	Existing Fee \$/Ton	Fee as of 5/15/03 \$/Ton
1826	Mixed Excavation Waste (Residential)	\$78.69	\$0
1922	Leaf and Yard Waste	\$98.69	\$0
1926	Mixed Excavation Waste (Commercial)	\$78.69	\$0

Town User Fee Revisions

1922	Leaf and Yard Waste	\$55.00	\$0
1926	Mixed Excavation Waste (Commercial)	\$110.00	\$30.00

All fees will be reviewed by the Town by July 1, 2005, unless the fees are further modified by a future agreement.

2. The Town will not be liable for any "C&D fee" for the months of April, May or June of 2003.

3. Waste Options will issue a refund to the Town of \$97,567 in connection with delays in start-up of C&D Facility operations.

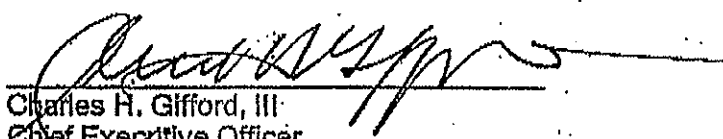
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BOARD OF SELECTMEN

TOWN OF NANTUCKET

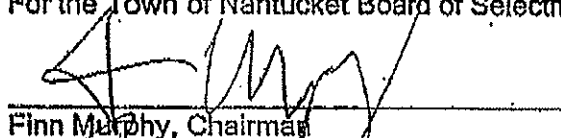
The parties agree that, for the period from contract inception through the fiscal year ended June 30, 2003, there are no outstanding claims or disputes associated with the Waste Services Agreement and all billings by Waste Options Nantucket to the Town for services provided for in the Waste Services Agreement.

For Waste Options Nantucket, LLC:

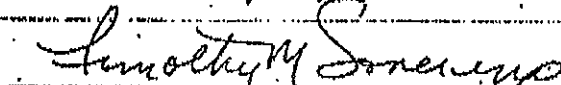
  
Charles H. Gifford, III  
Chief Executive Officer

Date: 1/21/04

For the Town of Nantucket Board of Selectmen:

  
Finn Murphy, Chairman

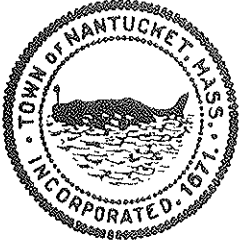
  
Frank Spriggs

  
Timothy M. Soveriho

  
Matthew G. Fee

  
Bruce L. Watts

Date: \_\_\_\_\_



## TOWN AND COUNTY OF NANTUCKET

16 Broad Street  
Nantucket, Massachusetts 02554

Telephone (508) 228-7255  
Facsimile (508) 228-7272  
[www.nantucket-ma.gov](http://www.nantucket-ma.gov)

December 17, 2008

Waste Options Nantucket, LLC  
50 Oliver St., Unit 215  
N. Easton, MA 02356

Reference is made to the Waste Service Agreement, dated December 1996, as amended by Letter Agreement, dated April 10, 1997, (the "Waste Services Agreement") and Amendment No. 2 to the Waste Service Agreement, dated May 2002 ("Amendment No. 2") between Waste Options Nantucket, LLC ("WON") and the Town of Nantucket, Massachusetts, by and through its Board of Selectmen, ("Town").

WON and the Town hereby agree to the following changes to the Construction and Demolition Facility Fee, ("C & D Facility Fee") and the Unit Billing Rate for the management of Mixed Waste ("C & D Fee"), as Amendment No. 2 defines these terms:

1. Notwithstanding the C & D Facility Fee or C & D Fee escalation provisions provided for in Amendment No. 2, referencing Section 9.08 of the Waste Service Agreement ("CPI-U recalculation"), the C & D Facility Fee and C & D Fee for the Billing Year July 1, 2008 through June 30, 2009, shall be calculated as if the annual percentage increase in the Consumer Price Index is 5% over the previous Billing Year. The parties acknowledge and agree that any CPI-U recalculation shall only apply to 50% of any C & D Facility Fee. Therefore, the amount of the C&D Facility Fee paid monthly during such Billing Year shall be \$29,751.04 per month, and the amount of the C&D Fee during such Billing Year shall be \$179.52 per ton.
2. This modification to the method of adjusting the C & D Facility Fee and C & D Fee will be retroactive to July 1, 2008 and will continue in force until June 30, 2009. WON shall provide the Town with a credit on the first invoice provided to the Town after the Effective Date of this Agreement to reflect the difference between the amounts invoiced previously during such Billing Year to date and the amounts that would have been invoiced had this Agreement been in effect as of July 1, 2008.

In addition, the Town may and hereby authorizes WON to divert certain appropriate organic recyclables (e.g. cardboard and low-grade paper) to the Composting Plant when the

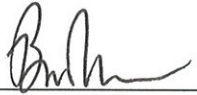
Town of Nantucket Board of Selectmen  
Waste Options of Nantucket, LLC  
Amendment to Waste Services Agreement  
December 17, 2008

cost of transportation and disposition through sale exceeds any associated revenue anticipated by Section 4.01(k) of the Waste Service Agreement. However, such authorized diversion shall


be re-evaluated at least quarterly by the parties hereto and affirmed by written communication upon each review.

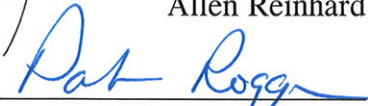
Please confirm your agreement to the foregoing by signing and returning a copy of this letter.

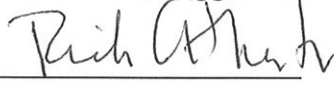
For the Town of Nantucket Board of Selectmen:

  
\_\_\_\_\_  
Brian Chadwick

  
\_\_\_\_\_  
Michael Kopko

  
\_\_\_\_\_  
Allen Reinhard

  
\_\_\_\_\_  
Patricia Roggeveen

  
\_\_\_\_\_  
Rick Atherton

Dec 17, 2008  
Date

For Waste Options of Nantucket, LLC

  
\_\_\_\_\_  
Charles H. Gifford III  
Chief Executive Officer

Dec 22, 2008  
Date